William E. Saracino: Campaign for Working Families' role in Bordonaro's loss

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JOHN KURZWEIL
EDITOR & PUBLISHER

JAN EDWARDS
MANAGING EDITOR

CONTRIBUTING EDITORS
LEON S. MCKINNEY
DAN BRENNAN

WILLIAM R. ALLEN • *ECONOMICS CORRESPONDENT*
RICHARD FERRIER • *ACADEME*
TIM W. FERGUSON • *THE WORKING PRESS*
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CORRESPONDENCE

George's Courage

First, I want to say how much I enjoy *CPR*. My only complaint is that it is not published often enough. I would like to provide a possible answer to the cover article by Mark S. Pulliam ("Say It Ain't So, Duke," *CPR*, March/April) regarding former Governor George Deukmejian's support for Supreme Court Chief Justice Ronald George.

As Mr. Pulliam is undoubtedly aware though he chose not to mention, Chief Justice George made one of the more courageous decisions as a superior court judge in Los Angeles when he refused to allow then District Attorney John van de Kamp to drop the charges against the Hillside strangler. While this one instance may not be sufficient to sway Mr. Pulliam on supporting the chief justice, I think it should be pointed out when criticizing Governor Deukmejian for his support.

James C. Phillips
Sacramento

Capps/Bordonaro

Richard Ferrier ("The Capps/Bordonaro Debacle," *CPR*, May/June 1998) holds me largely responsible for Lois Capps receiving 9,000 more absentee ballots than Tom Bordonaro in the March 10, 1998, special election. Mr. Ferrier should work on his math. Entirely as a result of the three absentee ballot mailers sent out by the California Republican Party, as many Republicans as Democrats voted absentee. We accomplished this, even though the Democrats enjoyed a two percent registration margin in this district. The problem was not too few Republicans voting absentee, but that Tom Bordonaro did not persuade these Republicans to vote *for him*. He lost the absentees by 9,000 votes. It is hard to understand why Mr. Ferrier believes this is somehow the fault of the California Republican Party.

In addition, only one of the three mailers was delayed. It was delayed because the way we were asked to fund it would have violated the Federal Elections Act. Mr. Ferrier refers to this as a "technical question in federal election law." Given that the issue's "Correspondence" section was devoted to allegations of Michael Capizzi's abusing his office by bringing criminal prosecutions for just such "technical questions," the California Republican Party can be forgiven for declining to engage in such violations.

Michael J. Schroeder, chairman
California Republican Party

Begging for Fraud

Given our laws, election fraud is no surprise ("Who ya gonna call?" *CPR*, May/June 1998). Even I did not know how bad it was until the June 2 election. Two women were in line ahead of me. The older of the two gave the last name. The precinct worker looked it up and called out a first name. The woman said that was her husband, now deceased. Another first name was called. That was a daughter, now living in Orange County *and registered there*. Confused, the precinct worker asked who the two standing before her were. The older of the two had not voted for years and her name had been moved to an inactive list, but she was given a ballot. The other woman said she was another daughter who lived in another precinct and was registered there. But since she now lived with her mother, the precinct worker took her name and gave her a ballot.

Thus, a dead man was registered. An absentee ballot could easily have been obtained for him. The first daughter was apparently registered twice. The older woman was allowed to remain on the roles even with years of inactivity and the second daughter, unregistered, voted and could easily have voted elsewhere. Our system begs for fraud.

Virgil Weatherford
Hawthorne

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SACRAMENTO SPECTATOR

Bring on those lazy, hazy, crazy days of summer. Those days of pretzels, and hot dogs, and budget stalemates. Okay, you purists, that's not exactly how the Nat Cole song goes, but it does describe the relevant political situation in Sacramento at the moment.

The good news is that the governor and legislative Republicans have the Democrats tied in knots on the budget surplus. Wilson, Leonard, and Ross Johnson have held fast from the start (helped by constant pressure from Tom McClintock) on insisting that most of the surplus go back to the taxpayers in the form of a permanent cut in the vehicle registration tax.

Democrats first said we must spend the entire surplus (now *there's* a surprise), that the state simply couldn't afford any tax cuts. After the GOP firmly rejected that stance, the Democrats decided maybe we could after all afford some "temporary" tax relief, but that most of the money still should be spent on worthwhile programs like an 8 percent!!! increase in welfare payments.

Once again the GOP hung tough. And predictably the Democrats are back at the table, this time with their own version of a *permanent* cut in the vehicle registration tax! There is little doubt the Dems will end up accepting something exceptionally close to the opening GOP offer, though they will never admit it.

This has been a marvelous lesson in Politics 101. You win in politics not by playing "kissy face" with your opponents. You win by playing "in your face." Let's hope Newt and Trent are watching and learning.

The results of the primary election have lifted GOP spirits in town. Without exception, the incumbents who ran more poorly than expected were Democrats (Assembly members Havice, Scott, Wayne, and Wildman). The incumbents who ran much stronger than expected were Republicans, in particular Assemblyman Peter Frusetta and Assemblywoman Lynn Leach.

Frusetta and Leach both represent supposedly "moderate" or "swing" districts. Yet neither have compromised their principles or watered down their beliefs. And both of them attracted enough Democrat cross-over votes in the primary to take themselves off November target lists. Somebody should sit Senator Bruce McPherson down and explain this to him, preferably someone with experience dealing with childhood learning disorders.

The Republicans in the state Senate however are feeling their oats after the primary. The are touting — and the facts seem to bear them out — the prospect of gaining two seats to add to their current total of 16. Your *Spectator* thinks they are purposely keeping their rhetoric low-key. Look for one of November's big surprises to be GOP successes in the upper house. Your *Spectator* predicts 19 Republican state senators come next December.

And in closing, don't believe media reports that the open primary brought in a slew of "moderate" victories in GOP legislative primaries. It didn't happen. In most instances the media cites, one conservative lost to an equally conservative candidate. And the Senate GOP caucus will move considerably to the right, replacing Ken Maddy and Bill Craven with Assemblymen Poochigian and Morrow. The Assembly GOP will be at least as conservative as it was, depending on how many new members defeat Democrat incumbents.

— A. P. C.

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EDUCATION

Finally, a fair evaluation of our schools

A three-step conservative strategy to reform California public schools appears, amazingly, to be two-thirds underway

RICHARD FERRIER and STEVE BALDWIN

WITH RELATIVELY little hoopla, at least out among the general public, this spring all California public school students, grades 2 through 11, for the first time in four years took a standard test of their basic English and math skills. The test was non-ideological and, in a notable victory for the Wilson administration over race-fixated politicians like San Francisco Schools Superintendent Bill Rojas, administered in English — characteristics both unremarkable and plainly sensible to those of us inhabiting real life California, but more than a little amazing when one considers that the tests were administered in the center of the fantastic realm of the public schools establishment. There, recall, the prime, often the only, imperative is the eternal struggle against America's historic, endemic racism, sexism, homophobia, and all the other ghastly specters haunting the left-wing's tormented imagination. Give a test just to find out if they can read, write, add, divide, think in a straight line? Unheard of, not to mention culturally imperialistic, Neanderthal, and a lot of other less mentionable things. But somehow it happened.

Next, in late June, the scores of a significant proportion of those tested began to be made public. Not all, to be sure: the edu-blob put the brakes on that, at least for a time, although it is beginning to look as though this cat is already too far out of the bag for even the partial score cover-up to last long. Whether it does or not, the partial, and growing, score release in itself is a major step towards honest reform of public education in California. Each schools' average test scores were to have been made available on the Internet at *http://www.cde.ca.gov,* and, pending a July 16 Court hearing, still may make their appearance there.* Also, parents have received a simplified report card comparing their child to the national norm in such basic subjects as mathematics, reading, and, for high schoolers, science and social studies. The test is the first step in a careful three-step strategy of assessment and establishment of accountability designed to give parents and school boards a benchmark for judging teachers' and administrators' performance.

Wilson and conservative activists can share the credit for this achievement, along with some parents and principled liberals from such groups as "Mathematically Correct." Several years ago, cries of outrage from "parents with pitchforks" blocked the touchy-feely, intrusive CLAS test, not in order to avoid holding kids and their teachers to standards, but to avoid standards pathetically low, subjective, unreliable, and invasive of privacy. The new test, the Stanford 9 or "STAR" test, as it is known, is nationally-normed, free of subjectivism, and already showing some disturbing shortfalls in the skills of California students cheated under the leadership of Bill Honig and Delaine Eastin, the previous and current state superintendents of public instruction. Fairness demands noting that Honig, and to some extent even Eastin, admit that abandoning phonics for

CPR education correspondent Assemblyman Steve Baldwin (A.D. 77) was Assembly Education Committee chairman in 1996. Richard Ferrier, a member of the Thomas Aquinas College faculty, is CPR's *higher education correspondent.*

** Showing how terrified of the STAR results some liberals are, the Oakland and Berkeley school districts obtained a temporary restraining order blocking the planned internet posting of the detailed test scores. San Francisco Municipal Judge Ronald E. Quidachay did not release an opinion, but he apparently agreed with plaintiffs' lawyers, who had argued that testing California's students in English violates the federal Equal Opportunity Act. Governor Wilson called the lawsuit the product of a judge and educrats "fearful of accountability." George Orwell is dead and unavailable for comment.*

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THE FRONT LINE

Defending Scouting

The great divide in our politics is less between Democrats and Republicans than between ordinary Californians up and down the state and the relative few who control much of the state's power structure. Exhibit A in the evidence could be the Boy Scouts' slow victory over the furious liberal assault on their associational and religious freedoms.

Supreme Court Chief Justice Ron George succumbed to the threat of a mass uprising against him in this year's judicial retention election when he chose recently not to misapply the state's Unruh Act to the Scouts. Unruh was amended before it was passed specifically to exclude non-business groups like the Scouts from its provisions, but George was not motivated by a sudden impulse to apply laws as written.

Were it otherwise, his Scout opinion would not have carefully avoided overturning two precedents, one from the Rose Bird Court, the other a 1995 opinion he'd written himself, that extended Unruh regulation to cover Boys Clubs and other private groups, precisely the extension the Legislature rejected. No, George saw the light about the Scouts because he feared feeling November heat from voters.

All along, it has been rank-and-file Californians that have protected the Scouts. In 1992, in an effort to force the Scouts to allow men sexually attracted to other men to become Scoutmasters, four of California's largest firms: Wells Fargo, Bank of America, Levi Strauss, and First Interstate Bank of California, announced they were cancelling future donations to the Scouts. That is, at a time when kids were up

against gangs, drugs, unwed pregnancy, and suicide, these corporate elites responded by targeting Scouting, with its dangerous promotion of duty, honor, reverence, and the conviction that right and wrong are real and that good men do one and not the other.

The corporations' public relations position was not helped by a report that made national news about the time they announced their new policy. In Tulsa, Oklahoma, two-year-old April Phillips fell into a pond and would have drowned but for nine-year-old Adam Kiddy, recent recipient of a Cub Scout aquanaut badge, who jumped in and saved the girl. "He was pretty brave," said April's grandmother. "Other boys would have just stood there."

And Californians did not just stand there while Scouting was under attack. By the thousands, they closed their Wells Fargo, B of A, and First Interstate bank accounts.

The Orange County Register's Harold Johnson wrote that he'd closed his Wells Fargo account and asked readers to respond. Later, he wrote that his "line was jammed for days. Nearly 400 calls came in. An elderly woman who took her (substantial) savings out of Wells Fargo said she 'hadn't had the enjoyment of doing something so right in a long time.'" Stockton businessman and local Scouting leader Rob French, besides withdrawing nearly $1 million from Bank of America, planned to place "half-page ads in area newspapers publicizing what these companies have done." He may not have had to do so because the banks backed down pretty quickly, resuming support of the Scouts.

As Ron George and certain corporate execs could tell you, the vast power of the few at the top, delegated to them by you and me, dissolves with astonishing speed when the people decide it is being misused. CPR

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the miserably failed whole language learning scheme was a mistake, although Honig waited until he was out of office and unable to do anything about it to say so and Eastin's conversion so far consists of talk alone. As for the plain truth that teaching math involves imparting computational skills, Honig remains silent while Eastin appears to be in a state of denial.

Of course, many Californians have known for years that our students are sub-par. In June, Cal State Northridge Business School Dean William R. Hosek wrote in the *LA Times:* "most freshmen entering the CSU system do not meet high school proficiency levels in reading, writing, and mathematics." The actual percentages needing remedial work system-wide are more than "most," varying from campus to campus and ranging from the 30s to more than 80 percent at Dominguez Hills. The CSU figures are public, but they have not made the impact of the STAR data for two reasons: they are limited to students entering the state university system (and do not include the whole student body) and the "feedback loop" to parents and the community is much weaker than it will be with STAR.

More good news on this front: The state Board of Education, aroused by knowledgeable Wilson appointees like Janet Nicholas and Marion Joseph, has taken a stand for phonics and high standards for reading, science, and mathematics. In a survey of state mathematics standards, the education watchdog Thomas B. Fordham Foundation gave California's new Mathematics Standards the highest possible rating. (Last spring, Delaine Eastin urged districts to ignore the new standards: they required students to perform long division without calculators — imagine!)

Combining the new Math and English standards with scores from STAR will provide both a marker of where we ought to be and an objective measure of how

WHAT YOU HAVEN'T BEEN TOLD ABOUT GUN CONTROL

By WILLIAM E. SARACINO

Inspired by the even more than usually ill-informed, not to say hysterical, debates on repealing the Second Amendment that characterized last year's legislative session, this new regular feature adopts the novel approach of considering Facts about guns, gun control, and gun owners.

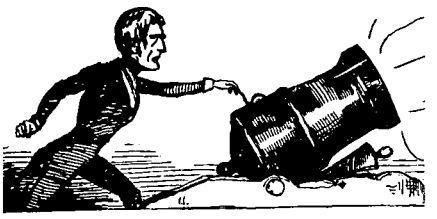
The unreported story:
Law abiding citizens
use guns to save lives.

News accounts of the school-related shootings during the past year have saturated the airwaves. The Fat Lying Weasel who currently occupies the Oval Office recently tried to use these tragedies to justify eroding the Bill of Rights even further.

But I bet you don't know how two of the three shootings were brought to an end.

Two of these rampages were stopped by a citizen using a gun to prevent further violence and save lives.

In the October 1997 shooting spree at a Pearl, Miss., high school that left two students dead, an assistant principal retrieved a gun from his car and physically immobilized the shooter while waiting for police to arrive. According to police records, they arrived 12 minutes after the assistant principal used his gun to stop the killing. How many more students would have died in those 12 minutes had the assistant principal been unable to do what he did? That is a question the networks have avoided asking.



More recently, the school-related shooting in Edinboro, Pa., which left one teacher dead, was stopped only after a neighbor brought his shotgun from his house and pointed it at the shooter when he started to reload his gun. The police did not arrive for another 10 minutes.

We as a society are safer when law-abiding citizens have unrestricted access to firearms to defend ourselves, our families, and our neighborhoods.

William E. Saracino is executive director of Gunowners of California.

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LEGISLATIVE FILE

As *CPR* goes to press, the GOP appears poised to win a considerable victory on the car tax, although not without compromises that could bring the issue back, possibly as a ballot measure in 2000. The Democrats have achieved free-fall from no-tax-cut-possible to maybe-a-small-sales-tax-cut to maybe-a-bigger-one to, most recently, how-about-a-partial-credit-on-your-income-tax-for-part-of-your-car-tax-payment.

They now seem to realize that Republicans found an unstoppably popular idea with dumping or at least trimming the antiquated vehicle license fee. The question now is: how large will the tax cut be? The GOP first asked to eliminate the tax altogether. Governor Wilson proposed cutting it 75 percent. The final agreement will probably be determined by the size of the budget surplus, currently projected to be about $4.4 billion.

Capitol prognosticators now say we should expect to see that divided more or less in half between a car tax cut (or rebate) and higher spending. The great uncovered story about the spending, by the way, is that the Democrats, from the start, while talking publicly only about schools, have been pushing large government employee raises and increased welfare spending as well. Republicans, with presidential-aspirant Wilson disposed to hang tough, won't give in on the pay raise without at least seeming to achieve some significant reforms (say, of the now automatic "merit" pay increase system into one that actually considers merit) in return.

Meanwhile, conservatives who've seen the political potency of the car

tax issue worry that a cut in the 50 percent range may be settling for too little. If such a compromise is struck, a 2000 initiative to wipe out the tax completely is possible.

A dramatic, long-overdue separation-of-powers battle could be shaping up between the legislative and judicial branches over the particularly odious judicial practice of forcing taxpayers to pay the ACLU to subvert our democratic process. As reported in *CPR's* November/December 1997 issue, last fall the Legislature, with only four "no" votes, passed, and Wilson signed, SB 291, a bill authorizing payment of $2 million in legal fees to American Civil Liberties Union and other lawyers whose lawsuit was used to plow under California's parental consent for minors' abortion law.

Evidently, this sort of thing had been going on regularly for some time. The idea is that a civic-minded group, the ACLU, has been kind enough to show the people and their elected officials the error of their ways by exposing and getting overturned a foolish law. So we should thank them by covering their costs, at the rate of several hundred dollars per billable hour.

Republican legislators who voted for the $2 million payment (most of them, to be fair, not realizing what it was), which covered the litigation's first stage only, were stung when they realized they had rewarded judicial activism. When the ACLU recently presented an additional bill for $713,000 for appellate work, 10 GOP Senators voted no, enough to block payment for now. Lawmakers resisting judges' arrogation of legislative power, even to this mild extent, portends potentially explosive battles to come. Real power still resides far more in the Legislature than with the judges; if our representatives decide to reign in the third branch, they can do it. CPR

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far we are from it. The genius of the GOP's strategy in public education reform has been to show the goal, measure the failure, and leave the remedy to the people, especially the local authorities.

Having now made good progress on the first two strategic steps, standards and assessment, the third, and final, step is establishing accountability, which will be achieved when failure to meet standards has real consequences. Here, Governor Wilson proposed AB 1901, shot down by the Legislature this spring, returning as a November initiative. The most interesting part of Wilson's package is creation of an "Inspector General," independent of the DOE, to crack the whip over low achieving districts. Of course, local school boards and parent groups are the preferred accountability agents, and the STAR results should give them the information they need to be effective. Wilson's parent-led "on site" councils, provided they are not dominated by mediocre administrators, could become useful barriers to the multicultural counter-universe's loony tunes agenda.

GOP Senator (and lieutenant governor nominee) Tim Leslie recently excised from his "accountability" legislation (SB 1561) a very bad idea — state use of the existing accreditation agency, a creature of the fuzzy educrats: WASC (Western Association of Schools and Colleges). Unfortunately, when bad ideas need new homes there is always Senator Vasconcellos, whose SB 1963 accommodates it, again calling on WASC to judge the schools. However, this is now a Democrat idea, so the GOP, with the governor's help, may kill it.

Two final points: The centralizing influence of statewide standards and tests should be ameliorated by the innovation and variety more charter schools with greater freedom from statewide regulation would bring, as long as the charters' performances are measured by STAR or a successor test.

Second, the key now is a little patience. It took 40 years of liberal self-esteem schemes and union excesses to get us into this mess. Now, finally, we have an honest test and the rudiments of real standards. Let's trust the locals for a few years; let them work their own way out from the left's errors.

THE LAW

Chief Justice or Chief Scofflaw?

"... nor shall private property be taken for public use without just compensation."
— the Fifth Amendment to the U.S. Constitution: omitted in Ron George's version?

MARK S. PULLIAM

"In his dissent in First English *[a 1987 U.S. Supreme Court decision], Justice Stevens articulated the precise argument on which the majority relies here .... The majority of the high court considered Justice Stevens's argument* and rejected it. *Now, the same argument has found new life in the majority opinion here." (Emphasis in original.)*

WHAT IS the occasion for this scolding being administered by a dissenting judge to his activist colleagues? Who is blowing the whistle on a judicial *coup d'etat?* Is it conservative Ninth Circuit Judge Alex Kozinski admonishing Stephen Reinhardt for ignoring controlling precedents in the latest skirmish of the culture war? No. The words above are those of moderate California Supreme Court Justice Ming Chin in a recent land use case criticizing the majority (including Chief Justice Ron George) for defying a U.S. Supreme Court decision. What is remarkable about this case, *Landgate, Inc. v. California Coastal Commission,* 17 Cal. 4th 1006 (1998), is that Ron George feels comfortable — in an election year — joining the majority in a 4-3 decision that ignores U.S. Supreme Court cases directly on point.

No sooner had Chief Justice Ron George done his obligatory impersonation of a conservative by ruling in favor of the Boy Scouts in *Curran* and *Randall* — al-

Mark S. Pulliam, California Political Review's *legal issues correspondent, is an attorney in private practice in San Diego.*

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WHAT DO PROPERTY LAW EXPERTS THINK OF *LANDGATE?*

Mark S. Pulliam

CPR's legal issues correspondent queried some of California's leading property law experts about the significance of *Landgate.* This is what they had to say:

Michael M. Berger, Esq., of Berger & Norton in Los Angeles (who argued *First English* in the U.S. Supreme Court): "The majority opinion is a finger in the eye of the U.S. Supreme Court. The California Supreme Court is in direct defiance of the U.S. Supreme Court. *Landgate* gives the Coastal Commission free reign to do whatever it wants to property owners, without fear of liability."

Kenneth B. Bley, Esq., of Cox, Castle & Nicholson in Los Angeles: "The majority opinion is flabbergasting. The California Supreme Court has read the possibility of a regulatory taking out of the California courts. *Landgate* misreads the Constitution."

James S. Burling, Esq., of Pacific Legal Foundation in Sacramento: "The majority opinion shows an appalling disregard for the law of takings. This Court has shown a systematic aversion to finding that governmental entities can be liable to property owners for all manner of regulatory abuses."

Professor Bernard H. Siegan, University of San Diego Law School: "This decision is clearly contrary to the tenor of *First English,* and will encourage government agencies to make errors at the expense of property owners, by insulating them from the consequences of 'temporary takings.'"

beit for evidently unprincipled reasons (see "'Whatever It Takes'?," *CPR* (May/June 1998) — than he reverted to the "centrist" approach that endeared him to O.J. defense counsel Gerald Uelmen. In *Landgate,* decided on April 30, George sided with the Court's liberals (Stanley Mosk, Joyce Kennard, and Kathryn Werdegar) to insulate the California Coastal Commission from liability to land owners who were erroneously deprived of the use of their property for *two years* without justification. The 4-3 majority disregarded the U.S. Supreme Court's holdings that "temporary takings" are compensable under the Fifth Amendment. Because property rights are protected by the U.S. Constitution, and on matters of federal law the decisions of the U.S. Supreme Court are binding on the state courts, the California Supreme Court is obligated to follow high court precedents on a takings issue. The majority's lawless holding in *Landgate* was too much even for Chin, George's companion on the November ballot and normally his ally. Chin dissented because he found the Coastal Commission's actions indistinguishable from those held by the U.S. Supreme Court to be actionable in the 1987 case *First English.* With her typical gusto, Janice Brown wrote a separate dissent accusing the majority of "judicial impudence" for flouting controlling Supreme Court decisions. Marvin Baxter joined in both dissents.

In *Landgate,* the Coastal Commission forbid a Malibu Hills property owner to build a house on a 2.45-acre lot because the Commission had not approved a legally-recorded lot boundary line adjustment previously obtained from Los Angeles County. (The property line between the Malibu Hills lot and an adjoining parcel, both already zoned for single family homes, was adjusted so that a road the County planned to build on part of the property would not bi-sect either lot; the road itself was approved by the Coastal Commission.) The Commission's refusal to permit construction of a house rendered the property valueless. The property owner challenged the Commission's position in court and won on the ground the Commission had no jurisdiction over the lot line adjustment. The property owner then sued for the "taking" of the use of his property during the two years the Commission had erroneously asserted jurisdiction over it. The trial court ultimately awarded the property owner $155,657. The Court of Appeal affirmed, finding that the Commission's treatment of the lot line adjustment issue was not an innocent mistake but a result of "the Commission's ongoing jurisdictional spat with the County of Los Angeles, combined with a desire to prevent Landgate from building on its parcel."

THE CALIFORNIA Supreme Court's majority opinion in *Landgate* reversed the Court of Appeal and ruled in favor of the Coastal Commission on the ground that a legally erroneous decision of a government agency during land

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use approval that results in a delay is merely part of the "normal" regulatory process, even if it deprives property owners of all economically viable use of their property. The Supreme Court found that the Commission *had* erred innocently, throwing out the lower Court's contrary finding, and concluded that such "good faith" mistakes by land use regulatory agencies do not violate the Fifth Amendment.

The majority's position directly contradicts the U.S. Supreme Court's 1987 decision in *First English,* which held that *exactly* the kind of government restrictions on use of private property imposed by the Coastal Commission in *Landgate are* takings and, thus, under the Fifth Amendment, are compensable, even if temporary. The U.S. Supreme Court specifically held that a property owner can seek compensation for denial of the use of his property during the period he was challenging an invalid land use restriction. The Court reached this result despite a dissenting opinion from Justice Stevens making the same argument advanced by the majority in *Landgate.* This is what Chin's dissent politely but firmly pointed out.

JUSTICE JANICE Rogers Brown's dissent was more firm and less polite. Brown's tightly-reasoned rejoinder bristles repeatedly over what she clearly sees as the majority opinion's thoroughgoing dishonesty: its tendency to "chatter endlessly," to engage in "judicial legerdemain," and to employ "tortuous logic," its willingness to frame the issue in a "tendentious formulation," to "dodge the otherwise inevitable result by changing the question," to apply a "squishy" multi-factor test in lieu of the applicable "categorical rule," to ask a "trick question," and "joust with its own strawman." Quoting authorities ranging from James Madison in *The Federalist Papers* to P.J. O'Rourke's *Parliament of Whores,* Brown skewered the majority for trivializing property rights — the bedrock of a free society — and for flouting controlling precedents of the U.S. Supreme Court. Brown's hard-hitting opinion, filling nine pages in the official reporter, ends with these words:

> When the answer to every question about what the public needs or wants or should have is always "more," the demand for free public goods is infinite. Against this relentless siphon, the takings clause, and the Courts' ardent defense of it, stands as a last lonely bulwark of property rights. It is, and will continue to be, a difficult rampart to maintain. That difficulty is built right into our constitutional structure. But in one area at least we have arrived at a clear understanding: When the government denies all economically viable use of property, even temporarily, it may not achieve its ends by a shorter cut than the constitutional way of paying for the change. In these limited circumstances, government must turn square corners — except in California. (Citation omitted; internal quotation marks deleted.)

By casting the deciding vote in favor of the Coastal Commission, and disregarding controlling constitutional law principles in the process, Ron George is responsible for this miscarriage of justice. This egregious display of activism cannot be ignored as "abortion politics" or as an aberrational departure from an otherwise sound judicial track record. Neither can the activism of *Landgate* be justified as a interpretation of the California Constitution; unlike some of the George Court's other controversial rulings, this one did not involve "independent state grounds." The *Landgate* ruling is a rogue decision, the work of a majority contemptuous of the rule of law. I hesitate to use the term, but by casting the deciding vote in *Landgate,* Ron George has revealed himself to be a scofflaw. Our Chief Scofflaw. No wonder Dianne Feinstein agreed to co-chair George's campaign.

The justices' voting pattern in *Landgate* perfectly illustrates the current composition of the Court: ranked from left to right, the justices range from arch-liberal Mosk, Kennard, George/Werdegar (indistinguishable in most cases), Chin, Baxter, and the fearless, incisive Brown. She is without question the "star" on the Court. In *Landgate,* Mosk wrote the majority opinion, but George cast the deciding vote. George rarely votes with the minority; he prefers to be aligned with the winners. In a flattering assessment of Ron George's first year as chief justice, former Rose Bird apologist Gerald Uelmen observed in the *California Lawyer* that the Court has seen an unusual number of 4-3 decisions since George succeeded Malcolm Lucas as chief, and that George "is in the majority in every case .... His dissent rate has dropped to zero."

In *Landgate,* however, he stood to "win" either way: by supporting property rights and upholding the rule of law, or by flouting the Bill of Rights and U.S. Supreme Court precedents in support of an oppressive agency trampling property rights. George chose his side. To some observers, this decision is the most telling proof of his true colors. To Pete Wilson, George Deukmejian, and George's other defenders, I ask: how can you defend this? CPR

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The Decline of American Civility

Moving from market to political competition exchanges initiative, prudence, and efficiency for favoritism, subsidy and protection. And civility falls among the casualties.

WILLIAM R. ALLEN

HAVE WE become more nasty and brutish over the last generation or two, or have the media just developed a keener eye for beastly behavior and now report it more fully? Steven Knack, while a doctoral candidate in economics at the University of Maryland a few years ago, cited evidence that civility has in fact declined. "... think of voting as just one particular type of socially cooperative behavior," he suggested. But the proportion of eligible voters actually going to the polls has fallen dramatically in recent decades.

There are other signs. Crime rates are higher now than 40 years ago. A smaller fraction of adults read newspapers and magazines or even watch television news, which may mean that today's citizens are less well informed. The proportion of young scholars on college campuses who cheat on exams reportedly has doubled since the 1960s. Charitable contributions, adjusted for income and other factors, have been declining since the late 1940s. Income tax compliance has fallen. All this, along with casual impressions of rudeness on the highway and crudeness in public expression, suggest a dismaying decline in civility.

Why? Mr. Knack suggests a weakening of traditional sanctions on abusive, self-indulgent behavior. Families, neighbors, and community institutions like churches have less influence today. And greater urbanization and mobility make it easier for individuals to escape accountability for the costs they inflict on others. Still, he overlooks another likely, and perhaps even more pervasive cause: a marked increase in political competition.

Competition in various manifestations occurs in all societies, for people want more than available resources can supply. The pie is smaller than combined appetites, so people compete for slices. But while competition is inevitably a fact of life in a world of scarcity, the *method* of competition varies widely among communities and over time. In *market* competition, people compete for a slice of the social output pie by offering something in exchange. But an individual will have more to offer in exchange — and thus be able to acquire more — by first *producing* more that the community values. Market competition induces people to *produce,* contributing to others' wellbeing. By competing for some of the pie, people end up baking a bigger one for the community.

Political competition is basically different. Here, rivals try to persuade government to *give* them slices of the pie produced by *others.* This method of competition brings forth belligerent conflict, for it directs efforts from producing the pie to demanding its political redistribution. The essence of the competitive game shifts from market initiative, calculated prudence, and economic efficiency to seeking selective favoritism, wasteful subsidization, and inhibiting protection by Big (and Little) Brother. Insidiously, political competition subverts respect for other people and their property rights and appreciation of their productivity. Victims, too, are manners and morals, which share with formal property rights the task of controlling and coordinating individuals' behavior for the community's benefit.

Civility pertains to more than personal gentility. At the societal level, civility must be made manifest in institutions, rules of the game, and processes which lead aggressive, grubby people to mesh and meld their self-interested efforts in such manner that community well-being is enhanced.

Political competition has been persistently edging out market competition for much of this century. Perhaps we should pay attention to this lamentable encroachment when trying to comprehend the decline of American civility. CPR

William R. Allen, of UCLA, is about as civil and otherwise cuddlesome as economists ever are.

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THE WORKING PRESS

A Steady Lot, the Californians

The state's journalistic establishment shows it is still nimble enough, when the mood hits it, to turn on a dime.

TIM W. FERGUSON

PETER SCHRAG'S book, *Paradise Lost,* is no best seller, but it did help shape a lot of the pre-primary analyses of California's electoral system. Result: more negative spins on the cynical initiative process from liberals who don't like having power taken away from public officials. Whoops! Poor timing for all concerned. The election results seemed to confound the conventional view — most of the propositions were defeated, school bonds passed, the biggest bucks (except for the California Teachers Association's) were rebuked, and career politicians prevailed. The journalistic establishment turned on a dime. "A steady lot, the Californians," hailed the lead item in *The Economist's* U.S. section. "It is perhaps California's relative nonchalance toward money in poltics that matters most," said the Brits. "Just when you were beginning to lose faith in American politics, the voters surprised you." You? *The Economist,* a supporter of Prop. 227, did take a richly-deserved swipe at Rep. Xavier Becerra for accusing teach-English sponsor Ron Unz of "immigrant bashing." Becerra, recognized in these columns as a cut above the usual political product of hollow minority districts, looked like just another ethnic interest-group hack with his attack on the immigration-backing Unz.

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Untold criticisms were made of the broadcast-media coverage of the primary campaign — and certainly it was barren, including the election night analysis. (Ever notice how you have to read a newspaper, or at least somewhere in a newspaper, to get reportage that actually understands the significance of a pattern of results? The same pattern that is so obvious to a politically aware person — but not to the clueless talking heads — the night of an election?) But for all that, the state's newspapers themselves provided scant coverage of most races outside of the governorship and, once the knives came out, the GOP Senate primary. The other statewide offices got the obligatory roundup story apiece, too often an unsophisticated job that dutifully recorded the candidates' expressions of purpose but didn't explain what was really motivating their efforts. And for the Legislature, fuhgettaboutit.

One specific lapse was in the school superintendent race. The various last-week rundowns gave a paragraph or two to the hopefuls other than incumbent Delaine Eastin and anti-bilingual sponsor Gloria Tuchman. But listeners to at least one radio interview program ("Which Way, LA?") might have been surprised to discover that the most articulate free-market candidate in the race was one Mark Isler, a San Fernando Valley businessman who has a cable talk show. That experience evidently honed his act, because he was point-blank in challenging the convention that more money was the salvation of the schools, or that government was necessarily the best provider of schooling. He advocated real choice, including charters, vouchers, and home teaching, with no apologies. Isler managed to get 12 percent of the vote and finish fourth. Maybe the guy has a future if he can at least get some ink.

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Speaking of schools, the *LA Times* published a three-part series on what it found to be the alarming condition of the state's K-12 system. The most striking aspect was a set of survey questions that found students and especially parents (most of all, black parents) giving low marks to the instruction offered, while most teachers thought the instruction is just dandy but the pay is too low. This perception gap went undiscussed

Tim W. Ferguson is California Political Review's *press critic.*

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in the accompanying text. The *Times* concluded its exposé with an endorsement of Delaine Eastin for re-election. Go figure.

* * *

Meanwhile, George Bush (Sr.) adviser Jim Pinkerton, a libertarian, helpfully uses his *Times* op-ed column to remind the world that Walter Annenberg's millions, donated to the public school monopoly, "have disappeared with barely a trace." As the fall campaign unfolds, watch for any mention in the "Gray Davis is dull" profiles of what Jill Stewart of *New Times LA* has twice reported to be the would-be governor's history of abusing his staffers during rages of lost temper.

* * *

From this column's January/February installment, regarding Prop. 226: "Make no mistake, the gauntlet has been thrown down for 1998, and Big Labor is going to have its guns blazing. It knows it's in a fight. Does the GOP?" The fallout from this well-intentioned but mishandled effort isn't over.

* * *

Did you see any coverage of one positive note for Republicans in Al Checchi's downfall — no multimillion-dollar support fund for Democrat legislative candidates, as brokered with Villaraigosa?

* * *

The *Orange County Register's* Daniel Weintraub had the earliest cogent analysis of Pete Wilson's final "education" budget — though his wording was colored by his evident distaste for the governor's history of pretense. Wilson, Weintraub wrote, advocates local control but chose to fund by state mandates. The piece was most insightful where it was most neutral: "It's no secret why Wilson would want to set priorities for local schools. He doesn't trust them to spend the money on anything other than higher teacher salaries. And he doesn't believe they will improve without pressure from the state." Which makes Pete, whatever his blarney, exactly right. As Weintraub notes, Wilson is willing to give authority to the school site, just not the districts, whose officials are usually stooges of the unions. That's because the CTA affiliates are the strongest force in local school elections, given that most communities pay little attention except where there's a hot-button issue such as bilingualism. Wilson fully realizes this. Does the *Register?*

* * *

It's an Orange County article of faith that liberals prefer the *Times* and conservatives the *Register.* A clear distinction remains between their editorial pages, but in years past the orientation of the news columns also played a role. Increasingly, that image is becoming blurred, as the *Register's* crew acquires some of the political correctness so widely associated with the downtown LA newsroom of the *Times.* Longtime *Register* readers were probably taken aback, for instance, on the Thursday after the primary when a swat team of Agustin Gurza, Dennis Love, Ronald Campbell, and Guillermo X. Garcia bled over the front section with their tales of Hispanic heartache over the passage of Prop. 227 — which carried with 71 percent in Orange County.

* * *

The *Register* had a little front-page fun with *Money* magazine's latest list of "best metropolitan areas" in the U.S., which ranked Orange County behind dreaded Los Angeles. But the coverage amounted to more than 60 column inches of hype for the stupid survey, one of Time-Warner's specialties. Other newspapers also gave the publication free advertising. A similar ranking by the company's *Fortune* magazine a couple of years ago found San Francisco to be the best city in America for business — a joke to any company that's not in Willie Brown's crony circle. Meanwhile, the under-reported story is that the Bay Area, with its insanely high public and private costs, is poised for a fall.

* * *

Darrell Issa says he may try another campaign, but like most business tycoons he must adjust to press hounding. He was an elusive if good-natured fellow on the hustings, trying to pick his spots in the media as he would in a marketing campaign. Fat chance. From the outset, with the *Wall Street Journal/California's* exposure of his company's hypocritical application for government training grants, to the *Los Angeles Times's* hurtful account of his early business dealings and the *San Francisco Examiner's* late hit on his younger days, he was poor at pre-empting opposition research. If he takes another shot, maybe he'll be more open — including about his ideology, which is a ways from the libertarian/conservative image he cultivated. CPR

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Rejoinder

The 22nd CD Race

Ferrier is wrong in his attempt to exonerate Campaign for Working Families in Tom Bordonaro's loss

by William E. Saracino

MY FRIEND Richard Ferrier spends a great deal of time exploring every corner, nook, and cranny of Tom Bordonaro's loss to Lois Capps ("The Capps/Bordonaro Debacle," *CPR* May/June 1998). He looks under every rug, inspects under every chair, and does the literary equivalent of a white glove inspection of the book shelves for dust. Yet after all of that, he fails to examine honestly and in fact notes only in passing the 800-pound elephant sitting in the middle of the room: the involvement and highly negative impact on Bordonaro of the Campaign for Working Families' anti-abortion television ads.

Now, before my fellow members of the "vast right-wing conspiracy" add my name to the "fallen away" list, a few credentials might be in order. I was Andrea Seastrand's consultant during her victorious primary and general election campaigns for Congress in this district in 1994. I have been involved in numerous other campaigns in that district on the legislative and local level. *All of them have been successful.*

I yield to no one in my admiration and respect for Gary Bauer. He has long been one of the most savvy and nuanced voices among Christian conservatives. The conservative movement is in desperate need of an active and aggressive national PAC. Bauer's history would indicate he is wonderfully suited to direct such.

That being said, Ferrier is simply wrong in his attempt to exonerate Working Families from blame in the Bordonaro loss. Setting the record straight involves no disrespect or animus to Bauer or his PAC. I wish them long life and prosperity. But we need to learn from our mistakes. Many years ago Bauer wrote an article for *Focus on the Family* called "Don't Swing That Bible" which told his folks that even in politics you catch more flies with sugar than vinegar. It was a masterpiece of instruction on how to make our points without alienating potential allies. More the pity then that the Campaign for Working Families' involvement in the Capps/Bordonaro race did virtually *everything* Bauer warned against in that grand column so long ago.

Tom Bordonaro was assured of beating Brooks Firestone for the Republican nomination once the Democrats decided to make an all-out effort to have Mrs. Capps reach 50 percent and win the election outright in the primary. The Republican electorate in that district is conservative. Firestone's only hope was to attract Democrat crossovers, and that possibility vanished when the Democrats put on the full court press for Capps.

Nonetheless, all elements of the conservative movement did well in the primary and played positive rolls. *They did this by restricting their activities to alerting their members that Bordonaro was the real conservative in the race.* The Campaign for Working Families' anti-abortion television spots were lost in the mix of all the other political ads. This would not be true in the run-off. The day after the primary, I had a discussion with a friend who helped run Michael Huffington's successful congressional campaigns in this district. He agreed with me that the *only* way Bordonaro could lose this election was if the Democrats were successful in making abortion the issue and making Bordonaro look like an extremist.

IF, ON the other hand, the election were run on the broad range of national issues, there was no doubt Bordonaro would win. That certainly included abortion in a larger list to be talked about. *But it did not put abortion up front as the central issue.* I was of the firm opinion that doing that would elect Capps. Mike Huffington's consultant (who won two elections in the district) agreed. Tom Bordonaro agreed. Andrea Seastrand agreed. Former Congressman Bob Lagomarsino (100 percent pro-life voting record) agreed. In fact *everyone* agreed. Except the Campaign for Working Families.

Many of us attempted to convey this message to all parts of the conservative movement who were in-

William E. Saracino is a political consultant living in Sacramento.

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terested in electing Bordonaro. When it appeared that not everyone believed us, a survey was commissioned. It clearly and unequivocally proved our point. Lois Capps was vulnerable on a broad range of bread and butter issues. Tom Bordonaro was vulnerable on only one — abortion, even including partial birth abortion (because voters did not notice, much less understand, the distinction). For reasons still unknown, some folks chose to ignore even this survey, which had been taken by a well-known and respected national pollster. The results were a tragedy within a tragedy. The conservative movement lost a congressional race it had in hand. Because of his handicap, Tom Bordonaro has the potential to be a devastatingly effective spokesman for all our issues. And the prolife movement received a black eye nationally when it could have elected another solid vote for life.

Certainly every election is decided by a wide variety of factors. This special election was no exception. However there is one immutable rule about special elections. That is, you must do only three things to win a special: 1) identify your voters and get them to vote, 2) identify your voters and get them to vote, 3) identify your voters and get them to vote.

THE HUNDREDS of thousands of dollars spent discussing abortion on television did neither of these things — for Bordonaro. Instead, it served to *activate* the Democrat base and *re-inforce* the Capps message: that Bordonaro was a Johnny-one-note and an extremist. Had even a *portion* of that money been spent identifying folks who agreed with Working Families on the issue and then targeted to make sure those people voted, the final outcome might have been different.

Richard Ferrier closes his piece by criticizing the Bordonaro campaign for being ill-prepared to handle the Working Families' intervention in the district and spotlighting abortion as an issue. He might be technically correct in that criticism from a campaign management workshop point of view. But this was not a drill or a test. It was real-life political warfare. And in real-life political warfare you do not expect your "friends" to pull the pin on a grenade and throw it to you with no warning other than a "Hey Tom, think fast." That is precisely what happened to the Bordonaro campaign.

Tom Bordonaro and the conservative movement deserved better. We all have a second chance come November, as Bordonaro has another shot at reclaiming this seat for all of us. Let's hope those of us who call ourselves his friends give him a chance to do so. CFF.

The Freedom to Agree

The L. A. School District Board of Education shows its appreciation for open-minded debate. These folks decide how math is taught to *your* kids.

by David Klein

SEVERAL YEARS ago, the National Science Foundation awarded the Los Angeles Unified School District $15 million to replace secondary school courses in algebra and courses in geometry with "integrated math." The grant, called the Los Angeles Systemic Initiative or LA-SI, is also intended to promote elementary school curricula, like "MathLand," which de-emphasize arithmetic and push "group discovery" learning with calculators. LA-SI has similar goals for science education.

Integrated math is unpopular with parents. It superficially combines statistics, geometry, and algebra in each of the middle and high school grades. Students are deprived of the concentrated exposure to algebra, geometry, and trigonometry required to pursue scientific careers, or even to become scientifically literate citizens. It is a dumbed-down version of high school mathematics intended to equalize mathematics achievement among all students. Critics, like myself, have termed it "fuzzy math" (detailed descriptions are available at the website of a parents group called "Mathematically Correct," which is critical of integrated math: *www.mathematicallycorrect.com/*).

The motivation for fuzzy math is a deep-seated fear among many liberals that minority students are just too dumb to learn real math. So, to equalize student outcomes, we'd better get rid of unpleasant topics like algebra, or at least dilute them. This is the reigning perversion of egalitarianism in liberal education circles. Liberals have revealed their racism and ceded the high ground in education to the conservatives without so much as a struggle. Education leaders regard parental requests for algebra courses for their

David Klein is a mathematics professor at California State University, Northridge, and a member of the Green Party. Despite considering himself firmly on the left, he finds much to criticize in liberal education policy.

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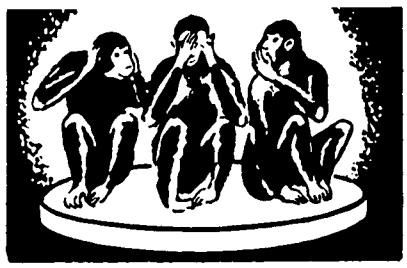
children as interference. LAUSD, with federal backing, knows what's best and everybody else has the freedom to agree. No other freedom is allowed.

But parents of school children failed to exercise their LAUSD-given freedom to agree during a meeting at a public school in the San Fernando Valley. On June 15, a group of 50 to 100 parents, teachers, and LA-SI leaders met at Nobel Middle School to discuss the implementation of integrated math. As a mathematics professor from the nearby Northridge campus of California State University, I was asked by two parents to attend. At my request, Ali Zakeri, another mathematics professor from Northridge, also attended that evening.

Prior to the meeting, a parent and local school activist, Diana Dixon-Davis, and I urged the LAUSD Board of Education to adopt the California Mathematics Standards and to make available Algebra I courses to students who request them. A sympathetic assistant superintendent, John Liechty, appropriated approximately $9,000 to each of three middle schools so that they could each offer a single Algebra I course, in addition to their LA-SI-sanctioned integrated math series.

But the principal of Nobel wanted no part of Algebra I. She would not even acknowledge that she had money approved for an Algebra I class. The June 15 meeting was an indoctrination session for integrated math.

The first hour was spent on the predictable dog and pony show, complete with overhead projectors, to demonstrate the futility of algebra and the glories of integrated math. Driven by the $15 million, fuzzy math teachers from other schools, LA-SI leaders, and even a district cluster leader lectured the audience that Algebra I is no good and integrated math is great. It was explained that within five years, all secondary math courses in LAUSD would become integrated math courses. Parents knew that the top



The principal insisted on knowing what we were going to say. I told her I was going to criticize 'integrated math' and speak of the virtues of a traditional course in algebra. She refused to give me the microphone.

performing high schools in LAUSD don't use integrated math, but comments from the audience were suppressed.

At one point during the presentation, the outgoing head of the math department at Chatsworth High, one of the leaders of the pro-integrated math movement, approached me from behind my seat and demanded to know where I got the copy of the integrated math textbook under discussion. It was sitting on my lap, and she demanded that I give it to her immediately. I had never before met her and only learned her identity a few days later. I refused to give her the book, and Diana Dixon-Davis explained that she had borrowed it from one of the schools. She signed out for it and my possession of it was above board. Evidently the math teacher did not want me even to see this math text, since I am a known non-believer of the true religion. She left in a huff.

Then three-by-five cards were passed around. These were for written questions. Verbal questions were not to be allowed by edict of the principal. Diana Dixon-Davis bravely interrupted the speakers on several occasions and read aloud statistics contradicting the claims of the high priests of fuzz. These interruptions were not appreciated by the truth monitors.

AS THE little cards were being collected, I stood up and objected to the process. I pointed out that it was designed to stifle any and all legitimate criticisms of integrated math and filter all questions through LA-SI leaders. I said that Prof. Zakeri and I came, not to ask questions on three-by-five cards, but rather to criticize the integrated math books used by this particular school.

The principal said that we would not be allowed to speak. But when several parents demanded that we be heard, she relented. Ali and I walked to the front of the auditorium. When we reached the podium, the principal insisted on knowing what we were going to say before she would hand me the microphone. I told her that I was going to criticize integrated math and speak of the virtues of a traditional course in algebra. She refused to give me the microphone, and almost on cue, one of the true-believers insisted that it would be unfair to allow us to speak.

That was that. We returned to our seats. Several parents objected once again. The principal said that we could come to her office and ex-

(Please turn to page 31)

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Woe Unto Us

The 1999 California BUDGET

The debate over the automobile tax, more than a mere squabble over a surplus, is a struggle over whether government growth ever can be reversed. Do tax revenues ultimately belong to the taxpayers or to the spending interests? Should we allow the Legislature to adopt the Brezhnev Doctrine?

By Benjamin Zycher

THAT HUMAN wants are infinite is a truth illustrated beautifully in the current debate over the California state budget. Equally obvious is Milton Friedman's old truism that no one spends other people's money as carefully as they spend their own. Accordingly, we have a tug-of-war spectacle over an estimated $4 billion state surplus, between those impatient for ever-more spending and those seeking to reduce the tax burden in general and to end an absurd automobile tax in particular.

Amid that cacophony we have an amusing side show, to wit, the old

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Benjamin Zycher, a southern California economist, is a senior fellow in economics at the Pacific Research Institute for Public Policy. E-mail: bglsz@thegrid.net

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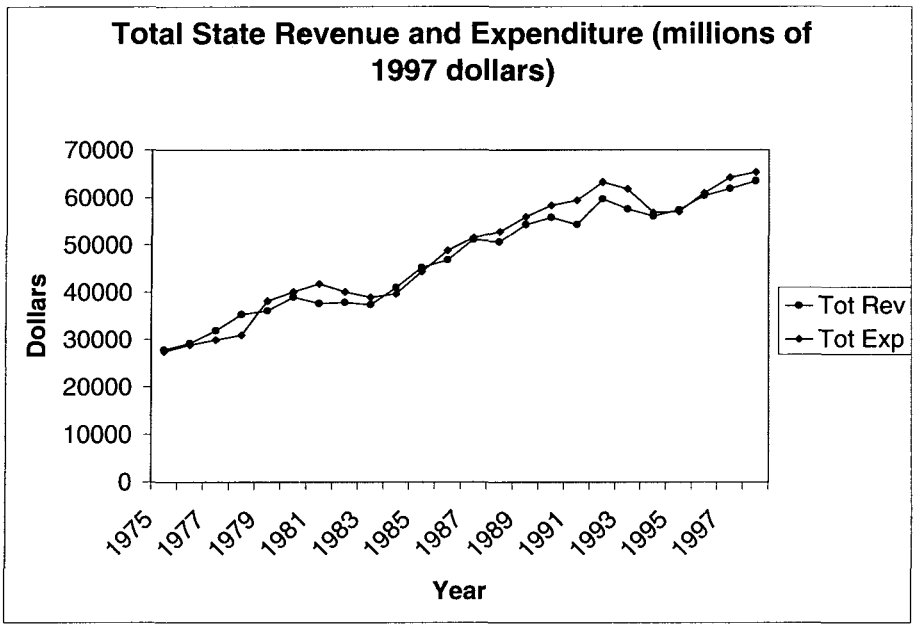

and very tired argument that property tax limitation — Proposition 13 — has squeezed public sector budgets, wreaked havoc upon public education, and brought locusts, lice, and boils down upon the heads of a hapless people. That the ineffable Eleanor Clift of NBC's "The McLaughlin Group" promotes this canard at every opportunity is proof enough that it is false, to which point I return below. For now, it is useful to review the recent history of California state tax revenues and expenditures in real terms (after adjustment for inflation), as illustrated in the figure above.

THE LONG-TERM trend over two decades is decidedly upward for both tax revenue and spending in real terms. Between fiscal years 1975 and 1998, real tax revenue increased at an average annual rate of 3.7 percent. Real total expenditures (General Fund, Special Funds, and certain Bond Funds) grew at 3.8 percent annually on average.

Prospectively, the budget proposed for fiscal year 1999 calls for a general fund spending increase from $53 billion in fiscal year 1998 to $58.3 billion (in nominal dollars), or almost 8 percent in real terms, assuming inflation at 2 percent. Tax revenues are forecast to increase from $54.6 billion to $57.8 billion, or almost 4 percent in real terms. Indeed, in the mere interval between the January submission of the governor's Budget and the May revision, forecasted tax revenues increased by 4.4 percent, from about $55.4 billion to about $57.8 billion, and forecasted expenditures increased by 5.2 percent, from $55.4 billion to $58.3 billion.

TABLE 1
GENERAL FUND EXPENDITURES BY FUNCTION
(millions of 1997 dollars)

Function	FY1998	FY1999	Percent Change
Legislative, Judicial, Executive	$ 1561	1816	16.3
State and Consumer Services	388	409	5.4
Business, Transportation, Housing	275	454	65.1
Trade and Commerce	53	195	267.9
Resources	734	1103	50.3
Environmental Protection	105	194	84.8
Health and Welfare	14376	14765	2.7
Youth and Adult Correctional	3991	4231	6.0
K-12 Education	21997	23107	5.0
Higher Education	6507	7236	11.2
General Government	2005	2501	24.7
Total	$51992	$56011	7.7

Source: *California Governor's Budget May Revision 1998-99*, page 54.
Note: Assumes annual inflation of 2 percent.

It is useful to review the year-over-year changes by state function so as to cast light on the perennial claim that "more" is needed. Table 1, below, presents those data. The total planned increase in general fund expenditures is 7.7 percent, about double the real long run growth rate for total expenditures from 1975 through 1998. Notwithstanding the usual shrieking about "unmet needs," nowhere have we observed our citizens dying in the streets *en masse*. "Needs" and interest-group wants are very different things.

The summary data outlined above do not control for the size of the state population, which, since 1975, has grown at a bit less than 2 percent annually on average. Accordingly, spending *per capita* has grown rapidly, at an annual average rate — again, in real terms — of almost 2 percent. The figure on page 19 illustrates the long-term upward trend in spending *per capita*. Declines in *per capita* spending occurred in the early 1980s and early 1990s, recessionary periods during which tax revenues were declining or flat.

That suggests that it is revenues that drive expenditures as a central dynamic, or, more crudely, that the bureaucrats and politicians spend what they can get. Clearly, the tax system affects the size and composition of the budget, as citizens vote their pocketbooks on both sides of the ledger. But the usual reverse inference made by most journalists — that the state government collects revenues sufficient to support "needed" expenditures — is inconsistent with any reasonable view of spending programs tailored to satisfy competitive interest-group demands for subsidies under the institutions of indirect democracy. And the truly simple-minded view — that government spending creates aggregate wealth and thus tax revenue — is too Keynesian to be taken seriously, although in a long-run sense it is clear that some gov-

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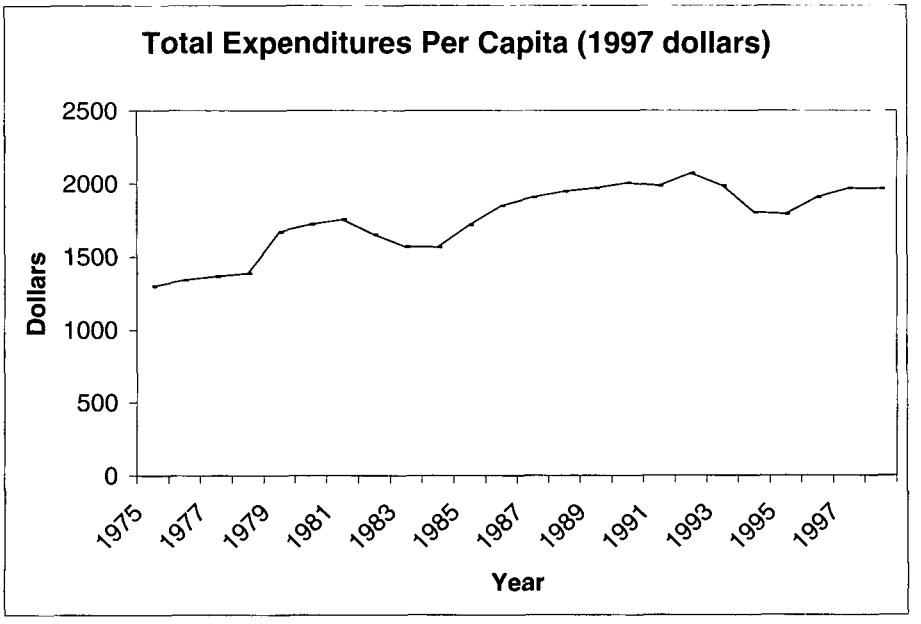
ernment spending is productive. That expenditures tend to follow revenues is supported by the data: The simple correlation between total revenue and total expenditure is .988, and that between *per capita* income and *per capita* total expenditure is .925. Thus, the variables move together closely, suggesting strongly that spending growth has been slow or negative when the government is "starved" (in a relative sense) for revenues, that is, during (or just before and/or just after) recessions. It is far less plausible to argue that spending "needs" decline during recessions, and with them the public sector demand for revenue.

Let us consider more carefully the precise implications of these data. For fiscal year 1966 — the last full budget year for the administration of Pat Brown — total state spending *per capita* was about $990 in constant 1997 dollars. For fiscal year 1998, the figure is about $1960, effectively double the earlier total. If we assume, generously, population growth of 4 percent over the next fiscal year, real spending *per capita* will grow by almost 4 percent as well, to roughly $2030 for fiscal year 1999, more than double the level at the end of Pat Brown's tenure in office. These comparisons are slightly misleading, in that fiscal functions have become more centralized, particularly for education in the aftermath of Proposition 13. But real spending *per capita* has increased by almost 42 percent between fiscal years 1978 and 1998, or about 1.8 percent per year, over the period during which the major shift took place. That is hardly surprising, in that centralization increases the monopoly power of government, easing the burden faced by public employee unions and other interest groups as they pursue taxpayer dollars through political processes. Accordingly, it still is reasonable to ask whether Californians are receiving half-again-to-double their money's worth from state government. As the lawyers would put it, the question answers itself.

CONSIDER STATE spending for K-12 education, for which the fiscal year 1999 budget totals a bit over $24 billion ($23.1 billion in 1997 dollars). That will be about $5,506 per pupil (in 1997 dollars); per-pupil spending will have worked out to about $5,319 in fiscal year 1998, and was about $5,124 in 1997. The figures for fiscal years 1970, 1980, and 1990 were, respectively, $3,583, $4,559, and $5,398. Notwithstanding the dip in the early 1990s, therefore, real per-pupil state spending on average has increased 1.0 percent annually since 1980, that is, in the aftermath of Proposition 13. Can anyone argue with a straight face that the performance of our bureaucratized public school monopoly has reflected that commitment of tax dollars?

BEAR IN mind that these figures exclude local and federal spending; total per-pupil spending in fiscal year 1999 is likely to be about $7,000. Consider a typical classroom of, say, 25 pupils. That yields a per-classroom budget of $175,000. Suppose, generously, that the teacher's salary and benefits total $70,000. Suppose that debt retirement (construction costs) is $15,000. Suppose that utilities and maintenance are $15,000, and that administration, library, other programs, and the like total $20,000 *per classroom.* Suppose finally that textbooks, computers, etc. are $25,000. Those figures range from high to absurd; but we still have $30,000 left per classroom. What is happening to these resources?

Whatever the answer, it is the death knell for the argument, summarized above, that property tax limitation — Proposition 13 — has caused the decline of California public education. That Proposition 13 dramatically centralized education and other local finance is clear; only the property tax is consistent with local control, that is, real competition among such government units as counties. Thus, Proposition 13 has had the indirect effect of reducing that competition, upon which outcome there is likely to have occurred an attendant decline in the efficiency of gov-



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ernment spending and taxation, and an increase in the power of the unions and other interests to extract subsidies from the taxpayers and to ignore their preferences. That the non-education of the inner-city poor is the major manifestation of this trend is a moral outrage, the monstrous dimensions of which have exposed once and for all the blinding selfishness and hypocrisy of the Democratic Party in general and of the left in particular. Such attempts as Proposition 174 in 1993 to introduce competition into the system have been met with displays of crass dishonesty shameless even by California standards; this contempt with which the education unions and bureaucrats hold parents and taxpayers finally has come home to roost in the forms of Propositions 209 and 227, respectively ending government racial quotas and the bilingual education charade.

Asked whether he would give automobile tax revenues back to taxpayers, Assembly Speaker Antonio Villaraigosa responded, 'We do give it back when we spend it for them.' Well, now. If government spending counts as tax reduction, then perhaps private spending ought to count as tax payments.

NOTWITHSTANDING THE adverse indirect fiscal effects of Proposition 13, its passage was absolutely necessary as a message to the Establishment that its disregard for the needs and preferences of taxpayers demanded an answer. The failure of Proposition 13 would have delayed the tax revolt at best, and would have signaled the viability of any and all falsehoods and demagoguery put forth in support of public sector waste. And that is why Proposition 13, whatever its downside effects, must not be repealed or even reformed. It must stand as a monument to the ability and willingness of the taxpayers to exercise final authority in the face of the coercive and confiscatory impulses of government.

The fiscal dilemma facing the citizens of any political community is that of matching their preferences for government spending, in terms of both total cost and the mix of various services, with the tax burden that they must bear. This becomes more difficult to achieve at higher levels of government because the monopoly power of government grows with the size of governmental units; it is more difficult to vote with one's feet at the state level than at the local level, and similarly for the federal level relative to the state level. Because Proposition 13 must remain sacrosanct, this limitation of government must be achieved through direct constitutional constraint of fiscal instruments: reduction and limitation of taxes, spending, and debt.

That is why the debate over the automobile tax is so crucial. More than a mere squabble over a surplus, it is fundamentally a struggle over the issue of whether government growth ever can be reversed. Do tax revenues ultimately belong to the taxpayers or to the spending interests? Ought the Legislature to be allowed to adopt the Brezhnev Doctrine: We own what is ours, but yours is up for grabs? More narrowly, the automobile tax, the last remnant of the old California personal property tax, is a poor instrument in terms of matching a tax base with the generalized demand for public services financed through general-fund budgeting. Broader-based taxes paid by all citizens are far better for that purpose. The fact that the automobile tax is earmarked for local governments does not help, because it is not raised locally; therefore, it is a poor device for matching the costs and benefits of government services. That it is raised by the state and then distributed to localities means that it is, in effect, a cartel arrangement: The state government imposes a higher tax than localities would be able to impose given the stronger competition among them. The automobile tax — like all taxes with relatively narrow bases — is appropriate only if the revenues are earmarked for services benefiting the owners of automobiles. Since that is not a relevant option — and since the additional services would in all likelihood be worth less than their cost — elimination of the tax is the appropriate course.

WHEN ASKED several weeks ago whether he was prepared to give the automobile tax revenues back to the taxpayers, Assembly Speaker Antonio Villaraigosa responded, "We do give it back when we spend it for them." Well, now. If government spending counts as tax reduction, then perhaps private sector spending ought to count as tax payments. More to the point, that statement captures beautifully the mentality of the left: It is the people who serve the government rather than the reverse. CPR

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It *Ain't* So

Ron George's conservative credentials

by George Deukmejian

Responding to criticisms of California's Supreme Court appearing in recent issues of *CPR*, George Deukmejian argues that in the areas of criminal law, social issues, tort reform, reapportionment, term limits, property rights, and judicial philosophy the George Court has a solid conservative record.

No one was more surprised than I to read a story *CPR* carried in its March/April issue entitled "Say it ain't so, Duke," which alleges that the California Supreme Court under Chief Justice Ronald M. George is no longer a conservative one. So, I did what any fair-minded person ought to do — and examined the record of judicial decisions by Ron George. After conducting that review, I must respond in no uncertain terms to the article: "It ain't so."

Look at the Whole Record — It's Conservative

The George Court is one that produces conservative results, and does so by following the first principle of strict constructionism in reaching its decisions. To suggest otherwise — as the previous article did — is to fail to look at the whole record of the Court, and to misread various of its decisions. Moreover, for the author to suggest a likeness between the judicial philosophy of Chief Justices Ron George and Rose Bird is not only misguidedly hysterical, but misleading to *CPR's* readers.

Criminal Law; The Death Penalty

Chief Justice George's voting pattern in *criminal law matters* achieves the goal of conservatives who understand a court's role in protecting public safety. His voting record on death penalty matters is superb. He has participated in 117 capital cases during his tenure on the high court as of the time of this writing, voting more than 91 percent of the time to uphold jury-imposed death sentences. It is sig-

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George Deukmejian served California as legislator, attorney general, and governor. A partner in the law firm of Sidley & Austin, he is honorary co-chairman, with Senator Dianne Feinstein, of Chief Justice Ron George's retention campaign.

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nificant, too, that he has never cast a vote to reverse a death penalty against a majority opinion upholding a death penalty.

By contrast, recall that the Court under Rose Bird voted more than 94 percent of the time to *reverse* death penalties, with Rose Bird herself personally voting to reverse in 68 out of 68 such cases.

With Ron George as one of its members, the California Supreme Court has been equally solid on other criminal law matters. In a majority opinion authored by Chief Justice George, the Court upheld the commonsense principle that discharging a firearm at an inhabited dwelling house constitutes a felony "inherently dangerous to human life," and on that basis affirmed a second-degree murder conviction (*People v. Hansen,* 1994).

He has been indispensable in closing loopholes. By way of example, he authored a recent decision holding that even where police have deliberately violated the "Miranda" rights of a criminal defendant who has asked for a lawyer, prosecutors may nonetheless use the defendant's statements in court to demonstrate that the defendant lied on the witness stand (*People v. Peevy,* 1998). In other decisions, he refused to hold that a criminal's conviction was automatically reversible where an involuntary confession was erroneously admitted but there was ample other evidence of the defendant's guilt (*People v. Cahill,* 1993), and upheld the constitutionality of vehicle sobriety checkpoints conducted without advance publicity (*People v. Banks,* 1993).

The Court has also taken great strides in protecting our communities against sexual predators, for example upholding, in opinions authored by George, the admission of evidence of a criminal defendant's prior uncharged sexual acts in a later trial for sexual offenses (*People v. Ewoldt,* 1994), as well as an increased prison term for a criminal who commits a sexual offense in the course of committing a burglary (*People v. Hicks,* 1993).

Individually and collectively, these criminal law rulings are vital to the protection of law-abiding citizens from the criminal elements that plague society. Almost any prosecutor who remembers recent history would confirm that, only 12 years ago, prosecutors faced immense obstacles in attempting to put away criminals as a result of the Rose Bird Court's rulings. We owe a debt of gratitude to the Supreme Court under Chief Justices Malcolm Lucas and Ronald George for righting a situation that had become intolerable and unjust, and many prosecutorial and law enforcement groups have recognized as much by endorsing Chief Justice George's retention.

"Three Strikes" Law Upheld

I feel compelled to respond to a specific attack lodged in the previous article against the Court for its decision that interpreted the "Three Strikes" law to permit judges, in limited circumstances, to strike allegations of prior convictions (*People v. Superior Court (Romero),* 1996). This decision was fully consistent with the principle of separation of power. Moreover, that article fails to mention that the decision was handed down by a unanimous Court *with the participation of former Chief Justice Lucas* — a fact I mention because the Court's critics do not appear to take aim at Chief Justice Lucas' conservative credentials.

In the *Romero* case, in order to uphold the constitutionality of the measure, the high Court interpreted the measure as not having eliminated the long-standing discretion of judges in sentencing matters, while also deciding that an abuse of that discretion would be reversed on appeal. Moreover, in several subsequent decisions, the Court has strengthened various provisions of the Three Strikes law. For example, Chief Justice George authored a 4-3 decision holding that a criminal defendant who engages in a course of criminal conduct may nonetheless receive multiple strikes for purposes of the Three Strikes law when more than one statute is violated, even though the dissent would have considered the crime to constitute merely one strike (*People v. Benson,* 1998). And in *People v. Fuhrman* (1997), also authored by Chief Justice George, the Court held that prior felony convictions need not have been brought and tried separately in order to be counted as "strikes" under the Three Strikes law, and further

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held that a remand for resentencing under *Romero* would not be required where the record is silent as to whether the trial judge understood that he or she retained the sentencing discretion recognized in *Romero.*

The Hillside Strangler

I was Attorney General when a very courageous Superior Court judge, Ron George, refused to accept the Los Angeles District Attorney's dismissal of 10 murder charges against the notorious "Hillside Strangler." George ordered the case to trial, and the jury returned multiple verdicts of guilt. If it weren't for Ron George, who knows how many other women would have been murdered?

It would be baffling and self-defeating for any conscientious conservative to risk the progress we have made in strengthening criminal law by taking for granted the current, sound treatment of criminal cases by the California Supreme Court, under the capable leadership of Chief Justice Ron George.

George has never cast a vote to reverse a death penalty against a majority opinion upholding a death penalty. By contrast, Rose Bird herself personally voted to reverse in 68 out of 68 death penalty cases.

The Rest of the Story

Now let us examine how the Court, with Ron George as a member, has been instrumental in acting to further the interests of conservatives and the public in legal matters other than criminal justice:

On *social issues,* he led the Court in recently acting to uphold the right of the Boy Scouts to promote faith and morality in their membership, rejecting the ACLU's challenge, brought on behalf of atheist and gay scouts, to the Scouts' membership policies (*Randall v. Boy Scouts,* 1998; *Curran v. Boy Scouts,* 1998).

In much-needed *tort-reform,* George has voted to restore common sense and individual responsibility to our civil justice system. By way of a few examples, we can credit him for authoring a decision overturning a Rose Bird Court precedent that permitted landlords to be held strictly liable for injuries to tenants and their guests caused by latent defects in the premises that the landlord knew nothing about (*Peterson v. Superior Court,* 1995). In addition, George voted to overrule two other Rose Bird Court decisions that allowed injured workers, who were eligible for workers' compensation, additionally to sue landowners for injuries caused by unsafe working conditions (*Privette v. Superior Court,* 1993).

On *legislative reapportionment,* George cast a vote to establish a fair reapportionment in the wake of the impasse reached between Governor Wilson and the Democrat-controlled Legislature after the 1990 census (*Wilson v. Eu,* 1992). California Republicans who are concerned that — following the upcoming census for the year 2000 — our Party enjoy fair and effective representation in the U.S. House of Representatives and state Legislature, would be wise to endorse the retention of Republican Justices like Ron George who have a proven track record on achieving a fair process to be used in reapportionment.

On taxation, George has voted to approve the supermajority vote approval requirement for "special taxes," consistent with landmark measures as Proposition 13 and Proposition 62, despite repeated legal challenges to deny Californians the benefits of those initiatives (*Rider vs. San Diego,* 1991); *Santa Clara County Local Transp. Authority v. Guardino,* 1995).

On *term limits,* George voted to uphold Proposition 140, which established term limits (*Legislature v. Eu,* 1991). If thoughtful conservatives pause for a moment and consider the judicial activism displayed by a federal district court judge and various Ninth Circuit judges in voting to strike as unconstitutional that popularly-enacted measure, they should appreciate in contrast our Supreme Court's strict constructionist approach.

A Conservative Judicial Philosophy

I would ask conscientious conservatives to examine these decisions in the areas of criminal law, social issues, tort reform, legislative reapportionment, taxation, and term limits, and ask if the Court during the tenure and under the leadership of Ron George is not truly one that has protected and promoted a conservative judicial philosophy.

Parental Consent Decision

The defense I have offered of the Court's conservative record also takes into account the handful of cases the previous article uses to attack the Court for

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not being conservative enough. That article first raises the matter of the parental consent decision in *American Academy of Pediatrics v. Lungren* (1997). I am disappointed with the result of that ruling, and I believe now as I believed when I signed the underlying legislation into law that Californians would be well served by a law requiring teenagers to secure a parent's consent before having an abortion.

We conservatives have advanced a judicial philosophy in which judges apply the text of a law. Here, the majority believed that the right of privacy, included in our State Constitution, should be applied to the parental consent law.

The dissenting opinions believe that a parent's right supersede's any right of privacy that a minor may have, that the voters never intended to deny parents their fundamental right to direct this aspect of the upbringing of their children and that the majority of the Court failed to accord deference to legislative findings.

Although I, too, disagree with the majority opinion in *American Academy of Pediatrics v. Lungren*, I realize that this is a question on which conservative justices can disagree.

Although I, too, disagree with the majority opinion, I realize that this is a question on which conservative justices can disagree.

Petition for Rehearing

In other articles published by *CPR*, the author of the previous article attacks the George Court for granting rehearing in *American Academy of Pediatrics* after the initial 4-3 majority had come to a different conclusion. This criticism ignores the fact that the Court did not reach out on its own to grant rehearing, but instead was faced with a petition for rehearing filed by the losing party. Consistently with its long-standing practice, the current members of the Court voted on the petition for rehearing, just as the new Lucas Court re-heard Bird Court decisions that had overturned death-penalty convictions. Even Justice Janice Brown voted to have the present Court rehear the parental consent case despite her belief that the Court should again uphold the statute.

Misleading Analysis

The previous article also challenges various of the Court's decisions on grounds that are profoundly misleading. For example, the previous article takes the Court to task for its decision (*Smith v. FEHC,* 1996) that California's anti-discrimination laws apply to a religious landlord who did not want to rent to an unmarried couple, alleging that the Court mistakenly concluded that "the exercise of conscience constituted 'discrimination on the basis of marital status.'" What this attack conceals from *CPR's* readers, however, is that the entire Court unanimously agreed on this point, as any intellectually honest observer must, in light of the Legislature's sweeping declaration that it is "unlawful ... [f]or the owner of any housing accommodation to discriminate against any person because of the ... marital status ... of that person." (Gov't Code § 12955).

Conscientious conservatives cannot criticize the Court for strictly interpreting such a statute, since it is a first premise of conservatism that courts be restrained and exercise a philosophy of strict constructionism. Moreover, the principal argument accepted in the landlord's favor by the dissenting justices in that case rested on the federal Religious Freedom Restoration Act, which the U.S. Supreme Court *struck down* last term to the delight of conservatives who had correctly maintained that the law constituted an unduly expansive and unconstitutional exercise of the U.S. Congress's powers (*City of Boerne v. Flores,* 1997).

Equally misleading are the previous article's attacks on three other decisions in which Chief Justice George participated. The discussion of *Loder v. City of Glendale* (1997) fails to mention one of the two holdings by the majority — that prospective employee applicants can be subjected to drug testing (because, unlike already-hired employees seeking promotion, the alternative of having the employer observe them at work is not available).

The discussion of *Alcarez v. Vece* (1997) mischaracterizes the property on which the broken meter box was located as "adjoining" rather than as a very small strip surrounded by the property of the landlord, who had knowledge of the hazard to his tenants and failed to alert them. And the discussion of *Stevenson v. Superior Court* (1997) omits mention of the fact that it is well established by legislative declaration that age discrimination is against fundamental public pol-

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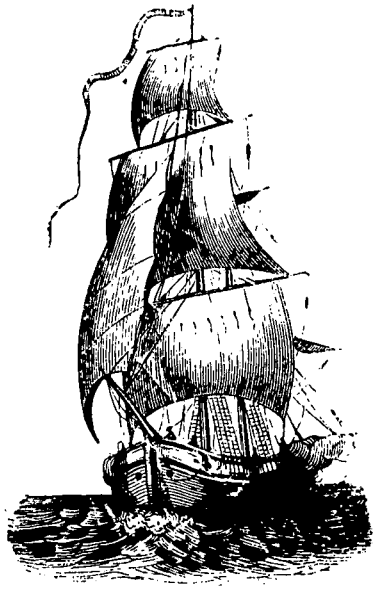
icy, and that redress for violations of such policy may be sought in the courts without the need to pursue administrative remedies.

Property Rights and Government Fees

Similarly, in the property rights context, an accompanying article in the *CPR* issue inaccurately portrayed the decision in the *Ehrlich* case (*Ehrlich v. City of Culver City,* 1996) — which, incidentally, is a decision of the Malcolm Lucas Court in which George and Lucas voted together. The headline itself, "How California Judges — including Ron George — made land ransom and art censorship legal" provides a hint at the absurdity of Professor Kanner's attack. The decision in *Ehrlich* is simply this: in California, if the government wants money as a condition for granting a permit, the Fifth Amendment of the U.S. Constitution is fully applicable and the government must overcome an exacting standard of review to justify the imposition of the fee. In reaching this obviously correct result, the Court invigorated a statutory scheme enacted by the Legislature to protect developers from disproportionate and excessive government fees and thus made it easier to challenge such fees.



Finally, the record should be set straight that the Court *reversed,* not upheld, the Court of Appeal decision that Culver City was entitled to $280,000 of the plaintiff's money merely because it asserted a loss of recreational improvements. *Ehrlich* stands for the proposition that a heavier burden is warranted on government to justify monetary exactions as a *quid pro quo* for issuing permits. By any conceivable measure, this decision by the Lucas Court has only served to strengthen property rights in California.

The Big Gamble

It is incumbent on all conservatives to undertake a sober review of the George Court record, following which I am confident our Republican Party will dismiss as misleading and misguided anti-court attacks such as the previous article and will stand firmly in support of our Court. Let us not forget that the composition of the current Supreme Court, with the sole exception of Justice Stanley Mosk, reflects the appointments of two Republican Governors — myself and Pete Wilson. For anyone to agree with the previous piece that the Court is a liberal, activist one in the mode of Rose Bird is to elevate hysteria and obfuscation over deliberation and accuracy.

To those who maintain that they disagree with the Court following a review of its decisions, I would ask a simple question: Compared to what? A wise maxim says that politics is the art of the possible, and I would suggest that before urging a change in the Court's membership, Court critics ought to be careful what they ask for.

Under state law, if a justice is not confirmed at an election, his or her term ends the same day the newly-elected governor is sworn in, and it is that governor who chooses the justice's replacement. As much as I earnestly hope for Attorney General Dan Lungren to ascend to the governorship, politics — as with anything in life — is uncertain, and we can cannot know who would be in the governor's office to fill any newly-created judicial vacancies. It would therefore be not only ironic for conservatives to attack a conservative Court, but downright irresponsible; to risk sacrificing a solidly conservative Court for the illusion of a perfectly conservative Court would amount to the sheerest form of folly.

I have during my career witnessed many issues that divided conservatives and presented me with close calls to make. This is not one of them. Conservatives have much to be grateful to Chief Justice George for in matters involving criminal law, social issues, tort reform, reapportionment, taxation, and term limits. As we cherish our conservative successes, let us battle judicial activism, and not confuse that mission by battling our conservative successes.

In writing this article, I have tried to shed light on the many omissions and distortions left by the previous articles about Chief Justice George. Having done so, I feel confirmed in my earlier judgment that, with the participation of Ronald George on our Supreme Court, Californians have enjoyed conservative results reached by a judiciary employing the traditional conservative tools of judicial restraint and strict constructionism in reaching its decisions. CPR

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A few words of welcome

by John Kurzweil

The following criticisms are, of course, not aimed at Governor George Deukmejian, honorary chairman of Chief Justice Ron George's campaign, whose entry in the judges' debate appears on the immediately preceding pages. I thank the governor for supporting the Republican principle of honest debate with the same energy he brings to his support of his candidate.

RONALD REAGAN'S motto was: "There's no limit to the good a man can do if he doesn't care who gets the credit." I mentioned it early in Governor Pete Wilson's first term to Dan Schnur, a Wilson spokesman at the time, asking whether the governor's presidential ambitions might interfere with his "doing good" here and now. No, Dan said, because the governor knew the surest way to the White House was to be a superlative governor. I expressed skepticism, a skepticism I retain today, reinforced by Wilson's and many of his supporters' performance regarding November's momentous judicial elections and, more importantly, the even more momentous issue of rule of law. It happens Wilson described the issue well in a 1997 speech to the Federalist Society. The "problem," he said:

> ... is judges who fail either to understand or to honor their critically important but narrowly confined role of applying the law as written .... who misconceive their function and abuse their very considerable power .... [who substitute] their own conscience, values, and policy judgment for those of the men and women we elect to the Congress and to the state legislatures to make our laws. Now in doing so, these judges ... betray the trust and the Constitution they have sworn to uphold. Rather than following the law, they arrogate to themselves powers to make the law which the Framers of the Constitution never granted them.

At the time, the governor was vexed with federal judges overturning initiatives he supported. They were good words for the state to hear from its top political leader because judges *do* arrogate to themselves powers they were never granted. But, surprise!, when Wilson's presidential plans get in the

John Kurzweil

way, ambition trumps doing good for California. Suddenly, echoing Rose Bird's defenders, not only Wilson but the campaigns of both Ron George and Ming Chin tell us the "problem" the governor so eloquently described has vanished: indeed, it's as if it had never been, and anyone who raises the issue becomes a "fringe" character outside the bounds of normal, civil political discourse. Yesterday, for instance, a Chin campaign spokesman denounced this event in the legal newspaper *The Recorder*. Two days earlier, a respected law professor and a practicing attorney, scheduled to support the George Court today in a debate with Gideon Kanner and Mark Pulliam, pulled out. They'd received calls, I was told, from individuals "high up" in the Republican Party advising them not to associate with such "right wingers" as we. To try to clear things up, I sent the following letter to Chin campaign Chairman Ken Khachigian:

Dear Ken:

In light of the civil tone of our conversation the last time we spoke and even more your long selfless work for the good of our state and Party, I admit I was surprised, to put it mildly, and profoundly disappointed to read the dishonest, mean-spirited comments attributed to [the] Chin campaign.

Is it, in fact, your contention that your campaign "chose not to send a representative to Anaheim because 'nothing about Saturday's event was fair, balanced or impartial'"? If not, I would very much appreciate a public statement saying so. If this is your contention, please explain for the benefit of those who were not privy to our conversations that at no time did you or anyone associated with the Chin campaign complain about unfairness, imbalance, or partiality to me or make any suggestions about ways to avoid any such perceived difficulties. Please explain that you said simply that your busy schedule, not allowing sufficient time to prepare, kept you from participating and that you agreed to suggest other potential debaters. Please explain why you would do so if you thought the event would be unfair.

I MADE EVERY imaginable effort to insure exactly a fair, balanced, and impartial debate, as you well know. Your campaign, Chief Justice George's campaign, and Governor Pete Wilson's administration turned down every opportunity to participate (as did several Republican attorneys I also contacted) .... Disprove the implication that no Republican in California is willing to take a stand for the Supreme Court before a group

(Please turn to page 31)

John Kurzweil is president of the California Public Policy Foundation.

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THE JUDICIARY 1998

Do Our Judges Serve the Law? – *A Republican Town Meeting*

Shawn Steel

A June 13 GOP gathering discussed the state Supreme Court and November's judicial elections. Opening segment sponsors: The California Public Policy and U.S. Justice Foundations. Part two sponsors: California Republican Party Judicial Evaluations Committee Chairman state Senator Ray Haynes and California Republican Assembly.

Mark S. Pulliam

Boalt Hall Law Professor Stephen Barnett and attorney Rex Heinke initially agreed to defend the resolution: "The California Supreme Court under Chief Justice Ron George has accurately and carefully and fairly applied the law," debating CPR's Mark Pulliam and Professor Gideon Kanner. At the last minute, Barnett and Heinke withdrew. (See John Kurzweil's remarks, page 26). Pulliam and Kanner made their cases, excerpted here, on their own. Attorney Shawn Steel moderated.

Shawn Steel

Our California Constitution entitles voters to pass judgement on all judges. I'm not representing the California Republican Party this morning; I'm here as an individual. But my, and the Party's, primary goal is Dan Lungren's election. The next governor will determine in large measure how the district lines are re-drawn for Assembly, state Senate, and Congress. I'm concerned that in the primary we had rather low Republican turnout throughout the state. That shows we're in for a long, tough march. I'm concerned that a campaign against Ron George and Ming Chin will heavily impact the entire political dynamics this fall.

Gideon Kanner

Mark Pulliam

I am not advocating Ron George's defeat. George is no Rose Bird. Bird was the jurisprudential equivalent of Lillian Hellmen, about whom it was said every word she wrote was a lie, including "and" and "the." George is not consistently wrong, especially in criminal cases. But being "better than Rose Bird" is not the bench mark.

I believe that, either consciously or unconsciously, George is tempering his decisions to please an overwhelmingly liberal academic, media, and establishment audience, although judges are supposed to make their decisions based on the law. Consider, for example, his 1997 *American Academy of Pediatrics v. Lungren* decision involving a bipartisan 1987 law signed by George Deukmejian requiring a minor to obtain her parent's or a judge's consent be-

Shawn Steel is California Republican Party Treasurer. Mark Pulliam is CPR's legal issues correspondent. Loyola Law School Emeritus Professor of Law Gideon Kanner is editor of Just Compensation, *a monthly periodical on eminent domain law. All comments are excerpted from remarks at the June 13 "debate" or the Haynes' Committee hearing. For a full transcript, send $4 to California Public Policy Foundation, P.O. Box 931, Camarillo, CA 93011.*

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fore an abortion. Most states have such parental consent or notice laws. The U.S. Supreme Court has upheld such laws nine times. In 1996, California's Supreme Court upheld the law, 4-3, stating: "a parent's right to direct his or her child's upbringing is among the most basic of civil rights." Then two justices retired. Two new justices were appointed, including Ming Chin, the Court decided to re-hear the decision, and the result flipped, the Court ruling the statute unconstitutional. George wrote the majority opinion. Ming Chin provided the additional vote.

RON GEORGE'S opinion did not rely on the United States Constitution but on the state Constitution — the same trick Bird used to pull with the death penalty to get around inconvenient federal precedents. It was based on a provision voters added to the state Constitution in 1972 that simply says all people are entitled to pursue and obtain safety, happiness, and privacy. On the basis of that, the George Court recognized a sweeping, constitutional right on the part of minors to be free from any type of parental oversight or authority, which I submit is a reckless and irresponsible interpretation.

Gideon Kanner

Property is very important, but what is more important is that unless individual property rights are respected, no other rights are safe.

I am not here to tell you how to vote, but to tell you what's been going on. California has always been inhospitable to private property rights, and has always taken an expansive view of the powers of regulators. But historically the Court was balanced. In some ways it was pro-government; in others protective of property owners' rights. This came to an abrupt halt in the Bird Court. In 1979, in a case called *Agins v. City of Tiburon*, the California Supreme Court out of the blue worked a revolution. It announced that in spite of what the U.S. Supreme Court had said earlier, there would be no compensation to any Californian whose property was so severely regulated that he was left with nothing, except the title and the obligation to pay taxes. In 1987, the United States Supreme Court cracked down on the California Supreme Court in two famous cases: *First English Evangelical Church v. County of Los Angeles* and *Nollan v. California Coastal Commission*. They made it clear our state Court had severely misconstrued federal constitutional law. But for the next 10 years, the California Supreme Court did not decide any of these cases. Recently, it re-entered this arena with a vengeance, and has not only stuck to its guns, but has pushed that regime of unlimited regulatory power over property rights further. In the most recent case, *Landgate, Inc. v. California Coastal Commission* (1998), the Court said when you are wrongly denied use of your property by the government, part of the normal process of getting approval is you having to sue them. So, you have to hire lawyers and go through years of litigation. In the end the courts say, "No, they were wrong; they shouldn't have done to you what they did. Thank you very much; you're not entitled to compensation for your losses." The Court, by an indirect route, has defied the U.S. Supreme Court, returning to the 1979 *Agins* precedent.

IS THE Court fairly and accurately applying the law as laid down by the U.S. Supreme Court? My conclusion is: no, it is not.

The Judiciary 1998

A CRP Judicial Evaluations Committee Hearing

Senator Haynes asks Republicans to speak their minds on state judges

The following excerpts are taken from a hearing held June 13, 1998, at the Anaheim Marriott hotel, sponsored by Hon. Ray Haynes, chairman of the California Republican Party's Judicial Evaluations Committee.

Hon. Ray Haynes

I believe the justices, particularly Chin and George, in a variety of cases have gone beyond their appropriate role. I state that up front so no one can say I have a hidden agenda. But as chairman of CRP's Judicial Evaluations Committee I have a separate role: to synthesize *Republicans*' opinions on judges and present that synthesis to the Party. Our role is to answer two questions: How do Republicans define judges' role in a free society? How do the judges measure up to that yard-stick? I hope this Committee goes 'way beyond November to set up a ba-

Committee members Ray Haynes • Andrew Cho • Brad Dacus

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Hon. Bill Campbell

sis for long-term Republican impact on evaluating judges. I think it's appropriate for the Party to take positions on judges based on principle. The issue is not how this will affect the governor's race. We are losing registration in California not because of controversy within our Party, but because we have not stuck to principle either in Washington or California.

Hon. Bill Campbell

A friend of mine told me he and his wife had just learned their unmarried daughter was pregnant. They talked with her; they prayed with her. She made the decision to carry the baby to full term. They're doing it as a family, giving guidance to that girl they've raised. I think there was some cleavage in the family as she was growing up, but this brought them together. They will work this out as a family. And it seems to me it should be our policy to reinforce the family.

Hon. Bill Morrow

The best way for us as a Party and political movement to mobilize support against liberal activist judges is simply to expose them to the general public. One of the best and easiest ways this can be achieved is by attempting to overturn bad court decisions legislatively. Whenever a court issues a ruling clearly lacking in judicial precedent and sound constitutional law, we should introduce a bill in Sacramento specifically to overturn it. By doing so, we will not only make specific court rulings issues on which voters and their representatives can take positions, but also restore policy making to the Legislature.

David West

Regardless of how the politicians cast this election, it is not a one-horse race. It is about more than abortion and parental rights. The George Court's jurisprudence under the Unruh Act, for instance, in my view, reflects a marked lack of principled solicitude for the U.S. Constitution's First Amendment rights to free expression and expressive association. Yes, last March the Court sustained the Boy Scouts' right to exclude homosexuals and atheists, and for the right reason: the Scouts are not a business establishment. But the decision, written by George, drew questionable distinctions between the Boy Scouts, on one hand, and, on the other, Boys' Clubs (protecting the Rose Bird Court's disastrous 1985 *Isbister* decision) and private country clubs (protecting George's own 1995 *Warfield* opinion).

David West

What distinguishes a Boys' Club from a Boy Scout troop? The Bird Court ruled that a Boys' Club's primary purpose is to operate a recreational facility — a swimming pool or gym — so it is a public accommodation, never mind that those facilities are merely incidental to the Club's purpose of providing boys guidance to prevent delinquency. And why is a country club a business establishment? Because the one at issue in *Warfield* happened to provide certain benefits at a charge to the guests of members. These distinctions, I submit, are meaningless, but what they show is a politically correct disregard for the legitimate associational prerogatives of private citizens in a non-commercial setting.

Lawrence Callaghan

Bob Nicholas

When Justices Rose Bird, Cruz

Hon. Bill Campbell represents California's 71st Assembly district. Assembly Judiciary Chairman Bill Morrow represents the 73rd district. Dave West is a director of the Center for the Study of Popular Culture. Bob Nicholas is president of Citizens for Law & Order. Hon. Tim Leslie, Republican nominee for California lieutenant governor, represents the 1st state Senate district. Tom Reddin is former chief of police of Los Angeles.

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John Courtney

Reynoso, and Joseph Grodin lost in 1986, three other Supreme Court justices on the ballot averaged a 77 percent "yes" vote and 48 court of appeals justices also averaged in the high 70s. Four years later, in 1990: no criminal justice issues on the ballot. Nobody cares. Five Deukmejian Supreme Court justices averaged 65 percent. And 53 appellate justices averaged in the mid to high 60s — a 10 to 12 point drop. Nobody knows what happened. We think there's a confusion with the federal courts, but nobody knows for sure. Four years later, 1994: 45 justices on the ballot, including three on the Supreme Court, all Wilson-Deukmejian appointees, averaged mid- to high 50s. So the trend is: high to mid-70s; high to mid-60s; high to mid-50s.

Hon. Tim Leslie

I was asked recently if I would support the confirmation of Justices George and Chin in November. I did not hesitate in my response: No, I will not. I was speaking as an individual voter, not as an elected official. Ordinarily, I do not have a litmus test for judges. I believe, as our Constitution establishes, that the judiciary should indeed be isolated from the shifting political winds. However, when judges act politically, in complete disregard for the will of the Legislature and in contempt for the people who elected them, they cross the line.

Tom Reddin

I urge Republicans not to oppose Justice Stanley Mosk. Of course, Mosk has some views with which you and I disagree. But I would like to call your attention to the following important facts: As a Supreme Court justice, Mosk has probably voted to affirm more death penalty cases than any other judge in the country. He has always had the respect of his conservative colleagues. He is a long-time member of the Federalist Society. And *Wall Street Journal* columnist Max Boot has written a book critical of certain judicial decisions, but which points to a Mosk opinion as a model of how opinions should be written to avoid frivolous and expensive cases and excessive litigation.

Audience comments:

I am concerned about a tremendous impact on the Lungren race when it appears there's internecine warfare in the Republican Party. We will have legislative reapportionment and we all remember what Phil Burton did to us. The chances of controlling either house of the Legislature are somewhat poor. We have Justice George's record in the Supreme Court's reapportionment decision, so he's been good in that area. If he and Chin are off the Court, the new governor appoints the new judges to sit on reapportionment cases. I was interested in Mr. Nicholas's comments. Republicans have appointed the majority of California's judges. If we open the floodgates, the Democrats are going to form a committee to go after our people.

— Lawrence Callaghan

The school nurse called about six months ago: my 10-year-old daughter was in the nurse's office with a headache. I said, "Give her some aspirin." And they said, "Oh no, Mr. Wagner, we can't do that." But it occurred to me, thanks to the Ron George's *Lungren* decision, in five years, if she gets herself in trouble, I don't even get a call when they take her for an abortion.

— Don Wagner

As a Party, should we not pay attention to the role of the judiciary just as Democrats clearly do by their support of judges? If we are unwilling to speak clearly about judges when they run for reconfirmation, when they're making decisions clearly out of control on

Howard Klein

such basic issues as parental rights, property rights, and associational rights, then how do we as a Party expect voters to see us as leaders?

— John Courtney

I'm an elected member of the Orange County Republican Central Committee and a CRP member. The Orange County Central Committee, a body of 42 directly-elected members and 17 legislative and congressional nominees, unanimously passed my resolution opposing George's and Chin's retention. I am not an attorney. I am, however, a father of two young girls. For me, this issue strikes at the very heart of my parental authority.

— Chuck Devore

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Klein

(Continued from page 16)

press our concerns privately the next day. When a few parents said they wanted to hear us, she said they too could come to her office.

I stood up and said that Ali and I would definitely not return the following day. The principal then said we could speak at the end of the three-by-five question-and-answer-session. About this time a *policeman* walked into the room and stood in the back.

The praise of integrated math droned on and the last three-by-five card was finally read. At that point a parent said that he wanted to hear what the "opposition" had to say. The principal said that it would not be fair for her to allow Ali and me to talk, since we were not previously scheduled.

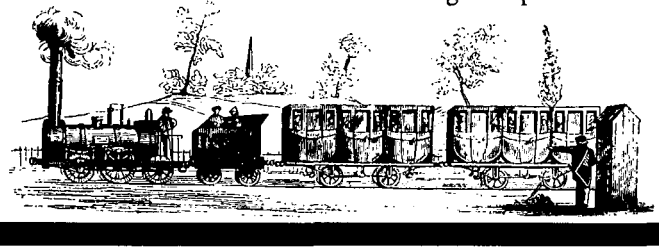
Objections to the censorship were stronger this time. One of the parents demanded a vote. There was a spontaneous show of hands overwhelmingly in favor of letting us speak. I introduced myself, explained the importance of algebra and the weaknesses of integrated math. I explained how a concentrated course in algebra is better for those who intend to go into math, science, or engineering. I talked a little about the excellent new California math standards. I introduced Ali Zakeri as one of 20 recent recipients in the U.S. of the Mathematical Association of America distinguished teaching award. He continued on the same theme, indicating the superficiality of integrated math compared to a good algebra course.

Then we had a question and answer session. One of the fuzzy math advocates demanded an example of how integrated math was more superficial than the traditional sequence. I talked about the treatment of the quadratic formula and explained in detail how it was splattered over three years in the integrated sequence and still not done properly. LA-SI leaders moaned audibly in derision. All the while the policeman was standing in the back of the room staring at me and Ali. An education professor from CSUN, with a child attending the school, stood up and explained that education professors at CSUN disagree with the "subject matter professors" and that from the point of view of research on how children learn, integrated math is better. These are the people who train our teachers.

Eventually the fuzzies took over the microphone again and resumed efforts to get the crowd to worship the goals of the $15 million NSF grant. I wish now in retrospect I had said something about the power of money to force programs in school districts. $15 million buys many true believers. Unfortunately, I didn't think of it at the time.

Ali and I left at this point. The situation was chaotic with parents not knowing what to believe. But as we left, the high priests were once again baptizing the parents in the true religion. I don't know what the outcome will be. Diana Dixon-Davis remained and fought it out. She was tersely instructed by the cluster leader not to announce that money had been allocated for any Algebra I course, unless she had proof.

She obtained that proof the following day in the form of a memorandum of understanding from Asst. Superintendent John Liechty. I have learned that some parents are now adamantly demanding a real algebra course instead of the NSF-funded stupification program. But I'm inclined to believe that the LA-SI leaders will ultimately have their way. Algebra and geometry as individual subjects will be abolished through government power. The sole right of parents is to agree. CPR



Kurzweil

(Continued from page 26)

of Republicans that will include three members of the Legislature, the representative of at least one more — the ranking Republican on the Assembly Judiciary Committee — the Treasurer of the California Republican Party, and, most importantly, the Chairman of the state Party's Judicial Evaluations Committee, appointed by Chairman Schroeder .... Send someone to defend your side, and leave off childish name calling ....

Khachigian did not respond.

Should Republicans discuss issues openly, like responsible adults? Should the California Supreme Court respect the people of California as their rulers in a system of popular sovereignty? The answers seem to depend upon which motto you follow: Reagan's or Wilson's.

In a sense, we *are* having a debate. Two conflicting ideas are being played out here, in actions as well as in words: two ideas about the people's role in our society, and about the definition of responsible behavior by those whom the people trust to administer their government and keep its rules. Listen to the words. Observe the actions. Choose your side in this debate. Thank you for coming. CPR

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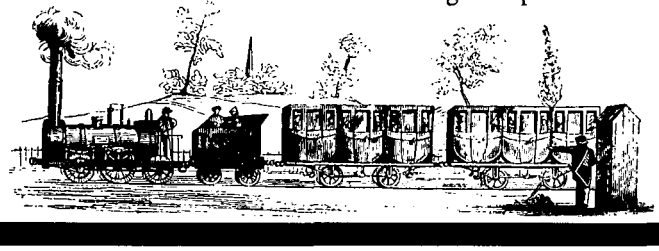

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(Continued from page 26)

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CRITICUS

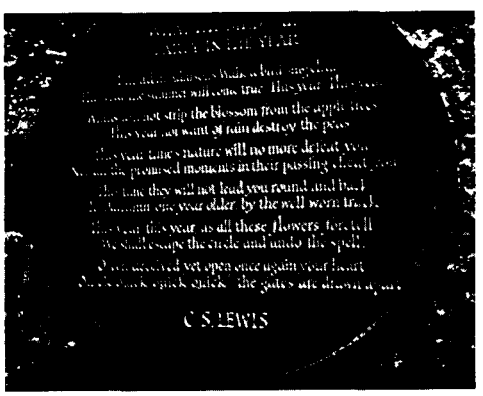
Dreaming Spires

BY G.B. TENNYSON

That sweet city with her dreaming spires.
— Matthew Arnold

ONE OF the aspects of being an American abroad in Europe is that one is often taken to be, shall we say, intellectually challenged or at least uninformed and in need of elementary instruction. This is largely a correct perception, occasioned in no small measure, Criticus believes, by the Hollywood-encouraged, perpetual teenager quality of American speech and demeanor. It can even work to one's advantage in countries where one does not speak the language, for then one can point and grunt and use sign language without embarrassment and usually gain a helpful response from the locals. It can also be wearying, as when a Parisian points to the Eiffel Tower and informs you, *"C'est la Tour Eiffel."* It is to avoid having costermongers and the like point out Big Ben, saying, "That's Big Ben," that Criticus falls into his *faux* English accent when he finds himself in Britain. A pardonable peccadillo, he hopes.

There I was in the Eagle and Child (popularly "Bird and Baby") pub in Oxford having a pint of bitter with Walter Hooper in honor of the Inklings when a party of Americans came into the back room to look upon the various Inklings photographs that adorn the walls. They were speculating on who was who in the pictures, so Criticus enlightened them. "This is Tolkien, this is Charles Williams; over here is Joy Davidman Lewis; and this is a group picture of C.S. Lewis, Owen Barfield, and their friends Cecil and Daphne Harwood." And so on. They were extremely grateful, so I gave them further information, such as that the gentleman sitting with me was the one who provided these pictures in the first place, and that he was the world-renowned Walter Hooper, biographer and editor of the very C.S. Lewis whose fame had drawn them to the pub. This gave them a sense both of continuity and immediacy, and they thanked me most profusely. Then they began asking why and when I had put these pictures up, and I realized that they had taken me to be the landlord, which in Brit-speak means the proprietor or, more often, the manager of the pub (most pubs are actually owned by breweries rather than individuals). Warming to this thought, I told them the story of the Inklings and their patronage of the Eagle and Child (to use its official name) and all the rest, not



The Centenary Stone

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THE OXFORD UNIVERSITY C.S. LEWIS SOCIETY

invites you to the unveiling of

The C.S. Lewis Centenary Stone

on Wednesday 13th May at Magdalen College, Oxford

Proceedings will commence at 6.00 p.m. with Evensong in Magdalen Chapel
A drinks reception will be held in the President's Lodgings after the unveiling

troubling to disabuse them of the notion that I had been the instrument of all this homage. They left happy in the knowledge that they had come face to face with the last and noblest living representatives of the Inklings and in the very heart of Inklingsdom.

Well, perhaps they had in one sense, but not in another. They did not realize that they had been speaking to two Americans. Hooper, of course, has lived in England and indeed in Oxford for the past thirty-odd years, so his assimilation is understandable, whereas mine was mostly assumed. As I preened myself over their misperception, thinking how it also confirmed the general impression of Americans abroad, the real landlord came in to clear the table, greeting Walter as a regular and chatting briefly with me the stranger before asking where in America I came from ....

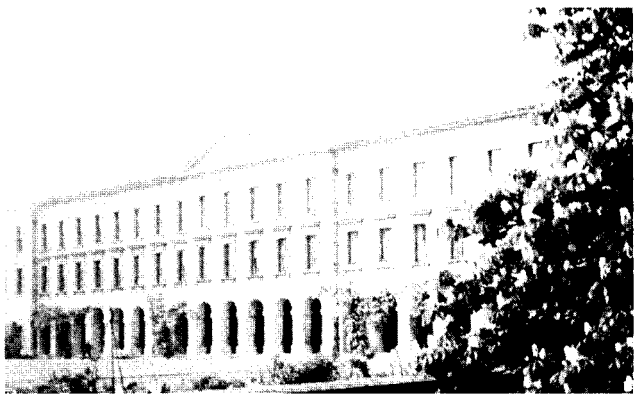
So, it was on to the primary reason that I was in Oxford at all. It was not to masquerade as a barkeep, but it was certainly Inklings and Lewis related. It was to attend the dedication of the C.S. Lewis Centenary Stone. What, Constant Readers will inquire, is a "Centenary Stone"? Well, it's not as such an established thing; in fact I know of no other Centenary Stone, but it was very much the right thing for Lewis. The Oxford C.S. Lewis Society conceived of the idea of honoring Lewis in this the hundredth year since his birth with a circular stone plaque bearing the text of a poem he wrote in 1938 set in Addison's Walk, a mile-long path along the Cherwell River adjacent to his rooms at Magdalen (pronounced "maudlin") College. It was one of Lewis' favorite perambulations during his Oxford years, as it had been for the eighteenth-century essayist Joseph Addison whose name it bears. Lewis walked along it almost every day during his years at Magdalen from 1925 to 1955. We were fortunate this year to have the ceremonies in an exceptionally balmy mid-May when the chestnuts and the wisteria were in full flower and the days had lengthened so that sundown did not come until nine in the evening. Matthew Arnold's Oxford, "lovely all times," was especially lovely this evening in the "year's primal burst of bloom."

G.B. Tennyson attended the Centenary Stone dedication ceremonies at Oxford as the editor of Owen Barfield on C.S. Lewis *(Wesleyan, 1989) and as* CPR's *European correspondent.*

By the time of the poem, Lewis was an established and published scholar, as well as author of books of poetry, apologetics, and science-fiction, and on his way to becoming the leading popular spokesman for Christianity in this century, though fame in that sphere would not come until 1942 with the publication of *The Screwtape Letters.* The poem, however, is more about nature, hope, and promise than directly about religion. It is titled "What the Bird Said Early in the Year." The text being in copyright, it cannot be reproduced here, but the plaque being in a public place was, and is, happily available to the camera. It appeared the next day in *The Times.*

TO GIVE the dedication an appropriate grace and gravity the Society arranged for the proceedings to begin with a Choral Evensong in Magdalen College Chapel. Viewers of the Lord David Attenborough film "Shadowlands" will remember the early scene shot in that impressive, mediaeval setting. The choristers, rendering the service mainly in Latin, were from the choir school operated by Magdalen College. Lessons were read by two persons close to Lewis during his lifetime, Lady Freud and Lawrence Harwood. Lady Freud is one of the now grown-up schoolchildren evacuated from London to Lewis's home in Oxford, the Kilns, during some part of the 1939-45 War and hence one of the catalysts for his *Chronicles of Narnia,* which casts four such children into the magical world of Narnia when they enter an old wardrobe in the Oxford professor's home. Lawrence Harwood is the son of one of Lewis's best friends, A.C. Harwood (pictured, you will recall, in the "Bird and Baby," as the "landlord" pointed out); Lawrence Harwood is also Lewis's godson. Together, Lady Freud and Lawrence Harwood helped bridge the gap of years since Lewis's death in 1963 to the present. Here again was continuity and immediacy.

There were perhaps two hundred at the Evensong, Criticus being very likely the one who had come the far-



New Buildings

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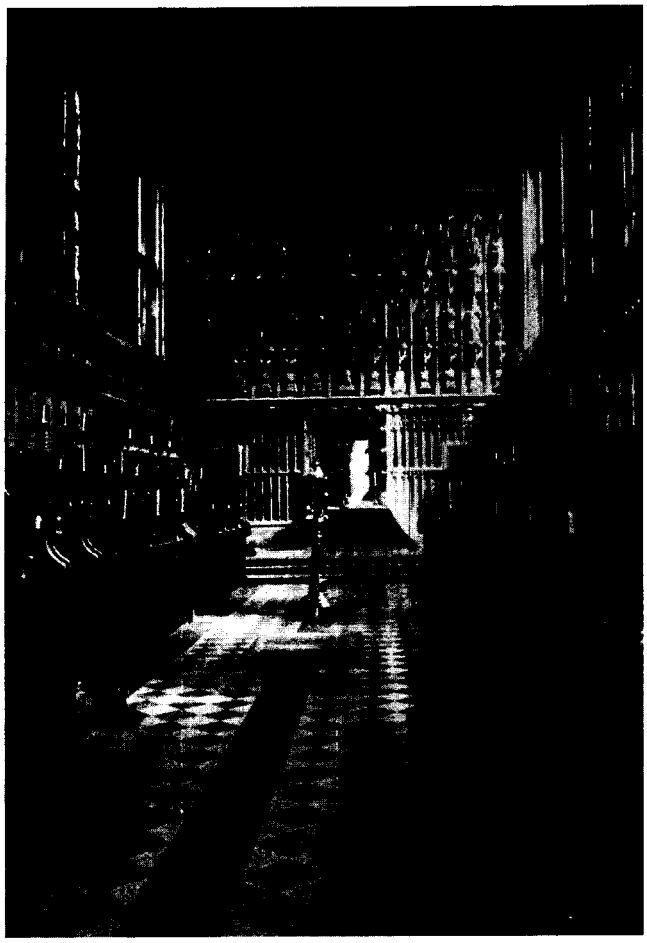

Magdalen College Chapel

thest distance. Following the ceremony the guests filed out of the chapel and proceeded through the quad of Magdalen, passing across from the New Buildings where Lewis had his rooms to Addison's Walk and along the river about a half-mile to a small bridge leading to the walls surrounding Magdalen's deer park, where fittingly the deer were grazing. There on the wall was a drapery covering the stone. And there we gathered to hear words from the President of Magdalen College, to meet the sculptor of the stone, and to attend to a most felicitous address by Michael Ward, Centenary President of the Oxford C.S. Lewis Society and current resident curator of the Kilns, which is being restored as a Lewis study center. Finally the plaque was unveiled, and Walter Hooper read aloud in genial tones the poem inscribed thereon. The time was not, as in the poem, "early in the year" but rather mid-spring, but it was the right time, for the promise of the poem had been realized in the richness of the flowers and the foliage.

We proceeded back along Addison's Walk, and about a third of the group by special invitation continued on to the chambers of the president of Magdalen where we enjoyed drinks and good company in elegant surroundings. Criticus was permitted by the president to photograph the bust of Lewis that graced one of the tables, but he forbore to try to explain to anyone anything about it, even though he did know the story of its provenance.

Although Lewis eventually left Magdalen College, Oxford, to take a professorship housed at the differently-spelled Magdalene College, Cambridge ("I have left the impenitent Magdalen for the penitent one," he quipped), he continued to reside in Oxford half the week and never ceased to love the place. The Inklings' regular meeting day at the pub was even shifted to accommodate Lewis's Cambridge schedule. Because Lewis, though enjoying a glittering Oxford career, was finally denied a professorship, some have seen his as one of the many lost causes that Matthew Arnold said Oxford was the home of. But Lewis's cause was not really anything so worldly as the title of professor (which he gained in any case at Cambridge with a chair created especially for him). Who else of his era has an Oxford society dedicated to his work? Who else of his era has a Centenary Stone? And above these (also worldly) honors, who else continues to teach, delight, and inspire readers all over the world? For Lewis's cause was that which Arnold in richly poetic prose claimed Oxford itself represented:

> And yet, steeped in sentiment as she lies, spreading her gardens to the moonlight, and whispering from her towers the last enchantments of the Middle Age, who will deny that Oxford, by her ineffable charm, keeps ever calling us nearer to the true goal of all of us, to the ideal, to perfection?

In this May-blooming Oxford, Criticus stayed at the Old Parsonage hotel, so named because it was once a

C.S. Lewis's rooms, above wisteria with flower pots.

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parsonage, though that long, long ago, since the hotel boasts of having had such guests as Charles I and Charles II. More recently Lord and Lady Attenborough stayed there during the filming of "Shadowlands." It is but a short walk from the "Bird and Baby" at the opposite side of Oxford from Magdalen. So the circle was complete: from the "Bird and Baby" to Addison's Walk, from the Centenary Stone to the Old Parsonage, from kings to celebrities, from literary luminaries to American imposters. The dreaming spires have seen them all. When the youthful "Jack" Lewis first saw Oxford in 1916 he wrote to his father: "This place has surpassed my wildest dreams; I never saw anything so beautiful." He loved Oxford. Oxford has shown that she loves him in return. CPR

BOOKS

Old Lies in Contemporary Garb

BY DAVID F. FAUSTMAN

THE MODERN liberal intelligentsia is not really composed of intellectuals in the classic sense, but rather of people who follow a mindless orthodoxy. These are the folks who would put Galileo in jail if he attempted to shake their view of the universe. Witness the absolute tizzy caused among the liberal elite by the notion that raw racial preferences might be somehow antithetical to fundamental American principles.

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The New Absolutes

William D. Watkins

Bethany House,
1997, 250 pages,
$15.95, cloth

The author identifies 10 absolute principles that the relativists have attempted to undermine. He then argues that these "old absolutes" have not been replaced by relativism, but rather, by a set of "new absolutes" that are "being imposed on us" by liberal elites, and which "are eroding our moral landscape." The 10 pairs of competing absolutes are as follows:

1. **Old:** Religion is the backbone of American culture, providing the moral and spiritual light needed for public and private life.

New: Religion is the bane of public life, so for the public good it should be banned from the public square. ("Freedom from Religion")

2. **Old:** Human life from conception to natural death is sacred and worthy of protection.

New: Human life, which begins and ends when certain individuals or groups decide it does, is valuable as long as it is wanted. ("Death, What a Beautiful Choice")

3. **Old:** The institution of marriage is God-ordained and occurs

David Faustman is a practicing attorney who writes on legal, business and political issues.

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between a man and a woman until death severs the bond.

New: Marriage is a human contract made between any two people, and either party can terminate it for any reason. ("I do, for now")

4. **Old:** The normative family is a married father and mother who raise one or more children.

New: Family is any grouping of two or more people with or without children. ("Family is whom you come home to")

5. **Old:** Sexual intercourse should be reserved for marriage.

New: Sexual intercourse is permissible regardless of marital status. ("Love the one you're with")

6. **Old:** Same-sex and bisexual intercourse are immoral.

New: All forms and combinations of sexual activity are moral as long as they occur between consenting partners. ("Dial deviant for normal")

7. **Old:** Women should be protected and nurtured but not granted social equality.

New: Women are oppressed by men and must liberate themselves by controlling their own bodies and therefore their destinies. ("I am woman, hear me roar")

8. **Old:** All white people are created equal and should be treated with dignity and respect.

New: All human beings are created equal and should be treated with dignity and respect, but people of color should receive preferential treatment. ("Race colors everything")

9. **Old:** Western civilization and its heritage should be studied and valued above others.

New: Non-Western societies and other oppressed peoples and their heritage should be studied and valued above Western civilization. ("History in the remaking")

But the 'new tolerance,' is deceptive. In *The New Absolutes,* William Watkins argues that 'all relativists are closet absolutists.'

10. **Old:** Different perspectives should be heard and tolerated, but only the true and right ones should prevail.

New: Only viewpoints deemed politically correct should be tolerated and encouraged to prevail. ("The politically correct life")

ONE CAN argue with the author's particular choice of the top 10 "old absolutes." The list is rather laden with marriage and sex, and does not include the old absolute of economic freedom versus the new absolute of the nanny state. Also missing is a discussion of the struggle between the old ideal of individual responsibility and the new notion, inspired by trial lawyers and other hucksters, that everything is always someone else's fault.

Abraham Lincoln and the 400,000 Northern boys who lost limbs or lives might disagree with the author's "old" number eight. The Civil War ended slavery and led to the Amendments that cured the biggest flaw in the United States Constitution. The statement of the "old" number seven is simply not correct. The United States, by any measure of world historical standards, has been in the forefront in granting social equality for women. The suffrage Amendment in the early part of this century eliminated the second biggest flaw in the Constitution. "Old" number nine also seems unfair. Western civilization is the only "civilization" on the planet ever to encourage the study and reverence of "other" civilizations.

While the author may be off a bit in his articulation of the "olds" (and perhaps has adopted somewhat the left's caricature of American society), he is right on with the "news." "The new absolutes represent cultural regression — old lies dressed up in contemporary garb." The "self-anointed," in Thomas Sowell's phrase, have exploited the Trojan Horse of "relativism" and "diversity" to displace traditional values, and have attempted to install a new intolerance. *San Francisco Chronicle* columnist, Debra Saunders, has correctly written that "Diversity has become an orthodoxy that punishes diversity of thought."

The author suggests that free-thinking folks, operating within the parameters of traditional American tolerance (see "old" number ten), must fight back. The culture is at stake. "Moral idiocy has reached new heights in our world," and we must regain the ability to recognize and declare baloney when we see it. We must be "unwilling to bow to intimidation tactics carried out by those caught up in moral stupidity and intellectual nonsense." CPR

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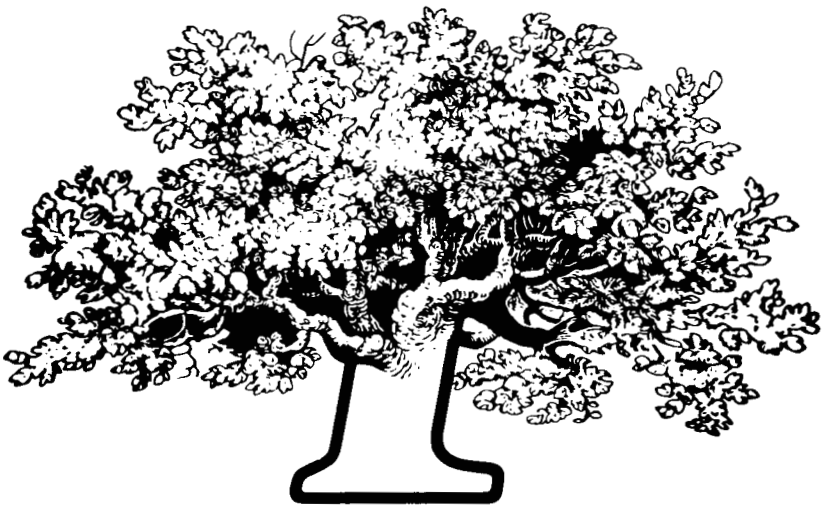

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